



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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शिमला, वीरवार, 23 जनवरी, 2014 / 3 माघ, 1935

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हिमाचल प्रदेश सरकार

HIGHER EDUCATION DEPARTMENT

ORDER

*Shimla-171002, the 20th January, 2014*

**No.EDN-A-Kha(15)13/2010-L.**—WHEREAS a charge-sheet was issued against Mrs. Neha Naresh Mahajan, Lecturer in Psychology, Government College Dharamshala (Distt. Kangra) under Rule 14 of the CCS (CCA) Rules, 1965 vide this department Memorandum of even no. dated 14-3-2013. The Charges framed against her were as under:—

“That the said Miss Neha Naresh Mahajan, Lecturer in Psychology, Govt. College Dharamshala, Distt. Kangra, H.P. is willfully absent from her duties *w.e.f.* 19-01-2004 to date, which is very unbecoming and tantamount to misconduct and violation of Rule 3 (1) i & iii of CCS (conduct) Rules, 1964 in general and F.R.17-A in particular.”

2. AND WHEREAS Mrs. Neha Naresh Mahajan, Lecturer in Psychology, Government College Dharamshala (Distt. Kangra) did not submit written statement of her defense and vide orders of even no. dated 8-4-2013, Mr. Ajay Awasthy, Sr. Asstt. Government College of Teacher Education, Dharamshala was appointed as Presenting Officer and Mr. Kuldeep Banta, Principal, Government College Shahpur, Distt. Kangra was appointed as Inquiry Officer to hold inquiry against her.

3. AND WHEREAS, vide letter EDN/GC/Inquiry/2013-2092 dated 4th Sep. 2013 has submitted that the Charged Officer Mrs. Neha Naresh Mahajan, neither appeared in person during any hearings nor appointed any one as her defense assistant to represent her case. Even the intimation letters for appearing before the inquiry officer were received back as undelivered with the remarks "LEFT INDIA". Accordingly, the final inquiry report has been submitted by the Inquiry Officer with the conclusion that the Charged Officer has failed to maintain the devotion to duty and is thus guilty of violating Rules-3(1)(i) & (iii) of CCS (Conduct) Rules, 1964 in General and F.R. 17-A in particular.

4. AND WHEREAS, the charged officer was given one more opportunity through Notice published in various newspapers i.e. Dainik Bhaskar dated 23-11-2013, Hindustan Times, Dainik Savera Times, Himachal Dastak with the direction to appear before the Principal Secretary (Hr. Edu.) to the Government of Himachal Pradesh, H.P. Secretariat, Shimla-171002 on 29th November 2013 11.00 AM in his Office Chamber alongwith her written statement of defence or submit her written statement by post within 15 days from the date of publication of this notice failing which ex-parte decision will be taken in the matter, but the charged officer did not appear on the scheduled date and time before the authority not submitted her written statement of defence.

5. AND WHEREAS, the undersigned has carefully gone through the charges framed against the officer, findings thereon given by the Inquiring Authority, all other records pertaining to this case and non-cooperation behavior of the said charged officer and found that the charged officer remained willfully absent from duty w.e.f. 19-1-2004 till date. The Charged officer was given many opportunities in her defence but she did not avail the same and compelled the undersigned to take ex-parte decision.

6. AND WHEREAS, keeping in view the facts and circumstances of the case as discussed above and after careful consideration of the whole matter, the undersigned does not find any reason to disagree with the findings given by the Inquiry Officer and the report of inquiry is fully agreed to and accepted accordingly. I hold that it has been proved beyond reasonable doubt that Smt. Neha Naresh Mahajan, Lecturer in Psychology, Government College Dharamshala (Distt. Kangra) has remained willfully absent w.e.f. 19-1-2004 to till date, which amounts to conduct unbecoming of a Government servant and violation of the provisions of the CCS (Conduct) Rules, 1964.

7. NOW, THEREFORE, the undersigned, in exercise of the powers vested under Rules-15 read with Rule-11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 hereby impose the penalty of "Removal from Service" on Smt. Neha Naresh Mahajan, Lecturer in Psychology, Government College Dharamshala (Distt. Kangra) H.P., with immediate effect.

R. D. DHIMAN,  
*Principal Secretary (Hr.Edu.) to the  
Government of Himachal Pradesh.*

Smt. Neha Naresh Mahajan,  
Lecturer in Psychology,  
Swaran Sadan Mission Road  
Garden Colony ADJ Ranika Mandir  
Pathankot-145001

**THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA****NOTIFICATION***Shimla, the 21st January, 2014*

**No. HPERC(IT)(1)-1.** WHEREAS the Himachal Pradesh Electricity Regulatory Commission has framed the Himachal Pradesh Electricity Ombudsman (Terms and Conditions of Service of Officers and Employees) Regulations, 2004 and the nature of service rules, especially the pay scales required frequent amendments and the process for amendment in regulations, being very intricate and time consuming, cannot be frequently resorted to.

AND WHEREAS in pursuance to the provisions contained in sub-regulation(3) of regulation 31 of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the Himachal Pradesh Electricity Regulatory Commission has made the Himachal Pradesh Electricity Ombudsman (Terms and Conditions of Employees) Order, 2014 and the provisions contained in the Himachal Pradesh Electricity Ombudsman (Terms and Conditions of Officers and Employees) Regulations, 2004 have become redundant;

NOW, THEREFORE, the Himachal Pradesh Electricity Regulatory Commission, in exercise of the powers vested under sub-section (1) of section 181 of the Electricity Act, 2003 (36 of 2003), read with section 21 of the General Clauses Act, 1897 (10 of 1897), hereby repeals the Himachal Pradesh Electricity Ombudsman (Terms and Conditions of Service of Officers and Employees) Regulations, 2004.

By the Order of the Commission,  
Sd/-  
Secretary.

**THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA****NOTIFICATION***Shimla, the 21st January, 2014*

**No. HPERC(IT)(1)-1.**—In exercise of the powers conferred by sub-regulation (3) of regulation 31 of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and all other powers enabling it in this behalf the Himachal Pradesh Electricity Regulatory Commission hereby makes the following order to determine the terms and conditions for appointment of the staff to be posted with the Electricity Ombudsman, namely:—

**1. Short title and Commencement.**—(1) This order may be called the Himachal Pradesh Electricity Ombudsman (Terms and Conditions of Service of Employees) Order, 2014.

(2) This order shall come into force on the date of its publication in the Rajpatra, Himachal Pradesh.

**2. Staff Strength.**—(1) The categories of the employees of the Secretariat/office of the Electricity Ombudsman and their strength shall be as under:—

Name of the post	Staff strength
Private Secretary	1
Senior Assistant	1
Driver	1
Office Attendant	2

Provided that the Commission may review the staff strength in consultation with Electricity Ombudsman from time to time.

**1. Terms and Conditions of Appointments of Staff.**—(1) The posts referred to in para 2 shall be the posts on the establishment of the Distribution Licensee i.e. HPSEB Ltd. and shall be filled up by Distribution Licensee by posting persons from its establishment.

(2) The Distribution Licensee, in the event of non availability or on administrative grounds, may post persons in any other grade in the same category against the post of Private Secretary, Senior Assistant and Office Attendant.

**Explanation.**—Against the post of Private Secretary a person in the grade of Senior Private Secretary, Additional Private Secretary, Personal Assistant etc. may be posted. Similarly against the post of Office Attendant, a person holding the post of Peon, Jamadar, Havildar or any other Class-IV grade may be posted.

(3) The employees of Distribution Licensee, while posted in the office of Electricity Ombudsman shall continue to draw salary, allowances and all other facilities as are available to them under the Distribution Licensee i.e. HPSEB Ltd.

(4) Where the Distribution Licensee is unable to deploy such employee(s), the Distribution Licensee may either itself outsource certain functions or authorise the Electricity Ombudsman to outsource certain functions on the terms and conditions being followed by the Distribution Licensee for outsourcing the similar functions.

**4. Secretary.**—The Electricity Ombudsman shall designate any one of the person holding the post of Private Secretary or Senior Assistant to function as the Secretary of the office of the Electricity Ombudsman.

**5. Applicability of CCA and Conduct Rules.**—Electricity Ombudsman will be the Controlling Officer of the employees. The provisions of the Central Civil Services Conduct Rules, 1964 and Central Civil Services (Classification, Control and Appeal) Rules, 1965 and other rules and service conditions as applicable to the employees of the Government of Himachal Pradesh and are made applicable, from time to time to its employees by the Distribution Licensee i.e. the State Electricity Board, shall be applicable to the employees of the office of the Electricity Ombudsman.

**6. Transitional provisions.**—Notwithstanding anything to the contrary contained in this order, the employees of the office of the Electricity Ombudsman, working immediately prior to the issuance of this order, shall continue to discharge duties and perform functions as such employees and be deemed to be the employees deployed by the Distribution Licensee till the period, for which they had been appointed, is expired.

**7. Power to remove difficulties.**—The Commission may by order make such provisions or give such directions, not inconsistent with the provisions of this order as it may deem

necessary for the removal of any difficulty which may arise in giving effect to the provisions of this order.

By the Order of the Commission,  
Sd/-  
Secretary.

## सिंचाई एवं जन स्वास्थ्य विभाग

### अधिसूचना

शिमला-2, 21 जनवरी, 2014

**संख्या:आई.पी.एच.-बी(एच)1-27 / 2013-बिलासपुर.**—यतः राज्यपाल हिमाचल प्रदेश को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार द्वारा सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः गांव भपराल उप तहसील भराड़ी जिला बिलासपुर में उठाऊ पेयजल योजना भराड़ी-लढयाणी, सुमाड़ी लैहरी सरेल वरोटा पम्प हाऊस, फिल्टर बैड-टैंक (प्रथम चरण) के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएवं एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है ।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को जो इस से सम्बन्धित हैं, या हो सकते हैं, की जानकारी के लिए भूमि अर्जन अधिनियम, 1894 की धारा-4 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने तथा सर्वेक्षण करने और उस धारा द्वारा अपेक्षित अथवा अनुमतः सभी अन्य कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं ।

4. कोई भी हितबद्ध व्यक्ति जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपत्ति हो तो वह इस अधिसूचना के प्रकाशित होने के तीस दिनों की अवधि के भीतर लिखित रूप में भू-अर्जन समाहर्ता, (मध्य क्षेत्र) मण्डी, हिमाचल प्रदेश लोक निर्माण विभाग के समक्ष अपनी आपत्ति दायर कर सकता है ।

### विस्तृत विवरणी

जिला	उप तहसील	गांव	खसरा नं०	क्षेत्र बीघा-बिस्वा में
बिलासपुर	भराड़ी	भपराल	700/1	00-19
			701/1	01-02
			किता-2	02-01

आदेश द्वारा,  
हस्ताक्षरित /—  
अतिरिक्त मुख्य सचिव (सिंचाई एवं जन स्वास्थ्य)।

## सिंचाई एवं जन स्वास्थ्य विभाग

## अधिसूचना

शिमला-2, 20 जनवरी, 2014

**संख्या: आई.पी.एच.-बी(एच)1-38/2012-कांगड़ा.**—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन के लिए नामतः गांव वनधियार तहसील पालमपुर जिला कांगड़ा में में महाल वनधियार पेयजल योजना व जल भण्डारण टैंक के निर्माण हेतु भूमि ली जानी अत्यावश्यक अपेक्षित है, अतएवं एतद द्वारा यह घोषित किया जाता है कि निम्नलिखित विस्तृत विवरणी में वर्णित भूमि उपर्युक्त प्रयोजन के लिए अपेक्षित है।

2. भूमि अर्जन अधिनियम, 1894 की धारा 6 के उपबन्धों के अधीन सभी सम्बन्धित व्यक्तियों की सूचना के लिए घोषणा की जाती है तथा उक्त अधिनियम की धारा 7 के उपबन्धों के अधीन समाहर्ता, भू-अर्जन हिमाचल प्रदेश लोक निर्माण विभाग कांगड़ा, जिला कांगड़ा को उक्त भूमि के अर्जन के लिए आदेश लेने का एतद द्वारा निदेश दिया जाता है।

3. भूमि का रेखांक, समाहर्ता, भू-अर्जन हिमाचल प्रदेश लोक निर्माण विभाग कांगड़ा, हिमाचल प्रदेश के कार्यालय में निरीक्षण किया जा सकता है।

## विस्तृत विवरणी

जिला	तहसील	गांव	खसरा नं०	क्षेत्र/हैक्टेयर में
कांगड़ा	पालमपुर	वनधियार	1149/7	00-01-44

आदेश द्वारा  
हस्ताक्षरित/—  
अतिरिक्त मुख्य सचिव (सिंचाई एवं जन स्वास्थ्य)।

## LABOUR AND EMPLOYMENT DEPARTMENT

## NOTIFICATION

Shimla-2, the 1<sup>st</sup> January, 2014

**No: Sharm (A) 7-1/2005 (Awards) L-D/Shala.**—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

Sr. No.	Case No.	Title of the Case	Date of Award
1.	334/2012	S/Shri Mansa Devi VS E.E. HPPWD, Joginder Nagar.	07-11-2013
2.	351/2012	Ramesh chand V/s -do-	-do-
3.	348/2012	Baini Chand V/s -do-	-do-

4.	352/2012	Sohan Singh	V/s	-do-	-do-
5.	371/2012	Gian Chand	V/s	-do-	-do-
6.	345/2012	Achhar Singh	V/s	-do-	-do-
7.	385/2012	Joginder Singh	V/s	-do-	-do-
8.	326/2012	Sawarna Devi	V/s	-do-	-do-
9.	349/2012	Mahajan Ram	V/s	-do-	-do-
10.	331/2012	Bhajni Devi	V/s	-do-	-do-
11.	376/2012	Dhani Ram	V/s	-do-	-do-
12.	72/2013	Santosh	V/s	-do-	12-11-2013
13.	113/2013	Secy. H.P. Nirman	V/s management M/s IKKU Power		13-11-2013
14.	262/2012	Pawan Kumar	V/s E.E. HPPWD, Ghumarwin		13-11-2013
15.	264/2012	Roshan Lal	V/s	-do-	13-11-2013
16.	219/2012	Kamal Dev	V/s President Truck op-Society		13-11-2013
17.	207/2012	Mohan Lal	V/s D.F.O Chamba.		13-11-2013
18.	179/2012	Govind Ram	V/s E.E. I&PH Padhar		13-11-2013
19.	180/2012	Chander Kant	V/s	-do-	13-11-2013
20.	182/2012	Prakash Chand	V/S	-do-	13-11-2013
21.	185/2012	Partap Chand	V/s	-do-	13-11-2013
22.	189/2012	Krishan Singh	V/s	-do-	13-11-2013
23.	33/2013	Bhag Singh	V/s E.E. HPPWD Dharampur		14-11-2013
24.	21/2013	Pawan Kumar	V/s	-do-	-do-
25.	32/2013	Misroo Ram	V/s	-do-	-do-
26.	23/2013	Vijay Kumar	V/s	-do-	-do-
27.	22/2013	Vivek Kumar	V/s	-do-	-do-
28.	39/2013	Gunanand	V/s D.F.O. Suket		16-11-2013
29.	223/2012	Jagdish Chand	V/s D.F.O Joginder Nagar		18-11-2013
30.	224/2012	Subhkaram	V/s	-do-	18-11-2013
31.	225/2012	Gulab Singh	V/s	-do-	18-11-2013
32.	120/2007	Anita Kumari	V/s E.E.HPSEB, Killar		19-11-2013
33.	315/2012	Ghanshyam	V/s D.F.O. Sunder Nagar.		28-11-2013
34.	15/2013	Pawneshwari	V/s Dy. Dir. Animal Husbandary.		28-11-2013

By order,  
R. D. DHIMAN,  
*Pr. Secretary (Labour & Employment).*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 308/2012  
Date of Institution : 09.08.2012  
Date of Decision : 01.10.2013

Shri Ramesh Chand s/o Shri Dhani Ram, r/o Village Gwal Tikkar, P.O. Kandgwal Tikkar, Tehsil Palampur, Distt. Kangra, H.P. .. *Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division Baijnath, District Kangra, H.P. .. *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ramesh Chand S/O Sh. Dhani Ram, Village-Gwal Tikkar, P.O. Kandwal Tikkar, Tehsil Palampur, Distt. Kangra, H.P. by the Executive Engineer, HPPWD Division Baijnath, Distt. Kangra, from time to time during 1999 to 2007, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on muster roll basis by the respondent on 16.05.1999. No appointment letter/order was issued in his name by the respondent/department. From the date of his initial engagement upto September, 2007, muster rolls for 15 days in a month were issued in his name by the respondent. He was not provided the work and given the artificial break for 15 to 16 days. Sometimes the muster roll for the whole month was issued in his (petitioner's) favour and on the expiry of the said month, his services were terminated by the respondent without any written order. The breaks were given by the respondent from time to time so that he does not complete 240 days of work for the purpose of the regularization of his services as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). At the time of his disengagement after every one month, works and funds were available with the respondent/department. The persons junior to him (petitioner) were retained in service by the respondent and they worked continuously. The names of the juniors are Shri Lakhwinder Singh and Smt. Kanta Devi etc. His (petitioner's) seniority was ignored by the respondent and the muster rolls were not issued in his name continuously by the respondent/department. During the period of his disengagement, he was not gainfully employed. The services of the persons junior to him, who were not given the intentional breaks, have already been regularized by the respondent after completion of eight years of service. He (petitioner) is also entitled to the regularization of his services in the regular pay scale from the date of the regularization of the services of his juniors alongwith the consequential service benefits. A similar case pertaining to the same Division instituted by the workman Shri Suresh Kumar bearing Reference No. 23/2010 has already been decided in favour of the labourer by this Court per Award dated 28.11.2011. It was held by this Court that the breaks in service given by the respondent to Shri Suresh Kumar were fictional in nature and the same will have no effect on his seniority and continuity in service. It was also ordered by this Court that the seniority of Shri Suresh Kumar shall be reckoned from the date of his initial appointment. The break period is required to be counted as continuous service. The respondent indulged in unfair labour practice as well as contravened the provisions of Sections 25-F and 25-G of the Act. Demand notice dated 10.6.2010 was served upon the respondent by him (petitioner), but in vain.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—



“i) The Hon’ble Court may kindly be set aside the illegal break period of applicant from year 1999 to 2007 and directed to respondent to condone the breaks period in continuity of service of applicant.

ii) The Hon’ble Court may kindly be again directed to respondent to pay the back wages of breaks period along with interest @ 12% per annum.

iii) The Hon’ble Court further directed to respondent to consider the case of applicant for regularization as per the seniority of applicant after completion of 8 years or from the date of his junior have been regularized in the regular pay scale Rs.4900-10680/- + grade pay and usual allowances as applicable to similar situated employees of the state government from time to time and also pay the arrears to the applicant from the date of his regularization to onwards.

iv) Any other relief the Hon’ble Court deems fit may kindly be granted in the favour of applicant and against the respondent in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh and the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are necessary parties to the petition. They have not been joined as parties/respondents because of which the petition is bad for non-joinder of the necessary parties. The petition is hit by the vice of delay and laches. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the employer employee relationship exists between the parties *i.e.* the petitioner and the respondent/PWD Department. However, it has been pleaded that the services of the petitioner were initially engaged in the year 1999 *i.e.* on 15.4.1999 by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. On account of the surplus labour in the National Highway Division, the petitioner was transferred to his (respondent’s) office in the month of November, 2004. Since then, the petitioner is working under him (respondent). No artificial/fictional breaks were provided to the petitioner at any point of time. Actually, the petitioner was an intermittent worker. He used to report for duty as per his convenience. As and when he came present, muster rolls for the whole month were issued in his favour. Shri Lakhwinder Singh etc. are senior to the petitioner. Moreover, from the very beginning they are serving under him (respondent). No dispute regarding the intentional breaks, if any, was raised by the petitioner at the relevant time. With the passage of time, the industrial dispute has become stale and faded away. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been violated. He had no intention to deprive the petitioner from working in continuity. As and when he (petitioner) reported for duty his services were duly engaged. The facts of Reference No. 23/2010 are/were different than the instant case. The Award dated 28.11.2011 cannot be used as a precedent. The petitioner is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. He (petitioner) has not been given the breaks in service by the respondent *w.e.f.* 01.1.2008. He is working continuously from that date. In Reference No. 110/2006 decided on 02.11.2010 titled as Him Shakti PWD Karamchari Sangh v/s Executive Engineer, HPPWD Division (B&R), Joginder Nagar, it has already been held by this

Court that the State of Himachal Pradesh or the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the lis.

5. Per order dated 04.01.2013, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent from time to time during the years 1999 to 2007 is illegal and unjustified as alleged? ..*OPP*.
2. Whether the petition is not maintainable in the present form? ..*OPR*
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR*.
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..*OPR*.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Not pressed
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	Not pressed

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Ramesh Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that initially his services were engaged by the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar. Subsequently, being surplus, he was transferred in the month of November, 2004 to the HPPWD (B&R) Division, Baijnath. He denied that he used to work as per his sweet will and convenience as well as fictional breaks were not provided to him by the respondent/department. He also denied that he has instituted a phoney petition to harass his opponent.

9. Conversely, Shri J.S. Guleria, Executive Engineer, HPPWD (B&R) Division, Baijnath (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that intentional breaks in service were given to the petitioner from time to time so that he does not complete 240 days of continuous service. He also denied that the workmen junior to the petitioner, whose names figure in the list Ex. RW1/B, completed 240 days of work earlier to him. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex.PW1/B is the copy of the letter dated 14th September, 2007 written by the Principal Secretary (PW) to the Government of Himachal Pradesh. *Vide* this letter, all the Chief Engineers and Executive Engineers etc. were directed to provide muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks.

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. Ex. RW1/B is the mandays chart pertaining to Shri Harbans Lal and six other daily wagers working under the respondent.

13. Ex. RW1/C is the copy of the reply submitted by the respondent before the Labour Officer-*cum*-Conciliation Officer, Kangra at Dharamshala during the conciliation proceedings which were initiated pursuant to a demand notice served by the petitioner under Section 2A/2K of the Act.

14. It is the admitted case of the parties that the services of the petitioner were initially engaged by the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar. The petitioner was transferred in the month of November, 2004 from the National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Baijnath being surplus. There is no denial of the fact that the petitioner is still serving the respondent/department.

15. The mandays chart Ex. RW1/A is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged by the respondent/department on 16.5.1999.

16. The version of the petitioner is that from the date of his initial engagement to August, 2007, artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the petitioner was an intermittent worker. He used to work as per his convenience. As and when the petitioner reported for duty, his services were duly engaged and the muster roll was issued in his name.

17. Section 25-B of the Act postulates as under:—

“25-B. Definition of continuous service- For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
  - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

18. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of calendar months into continuous service for one complete year.

19. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

20. Now comes the all important question as to whether artificial/fictional breaks were provided by the respondent to the petitioner as alleged or not?

To my mind, the answer to this query is in the affirmative. The mandays chart Ex. RW1/A clarifies that from the date of his initial engagement to 31.8.2007, work for all the months was not provided to the petitioner by the respondent. The muster roll used to be issued for an entire month in the name of the petitioner and in the next month, no muster roll was issued in his favour by the

respondent/department. If the petitioner used to willfully remain absent from duties from time to time (as alleged), then why no show cause notice was issued to him by the respondent and why no disciplinary proceedings were initiated against the petitioner by the respondent/employer? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The mandays chart Ex. RW1/B pertaining to Shri Harbans Lal and others unfolds that the persons junior to the petitioner were provided the work for 240 days or more by the respondent in a block of 12 calendar months. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

21. The action of the respondent in not issuing intentionally the muster rolls to the workman for at least 240 days in a calendar year or after the gap of a month/months due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

22. This issue is decided in favour of the petitioner and against the respondent.

## ISSUES NO. 2 AND 5

23. Not pressed.

## ISSUE NO. 3

24. Taking into account my findings on the issue No. 1 above, it is held that the State of Himachal Pradesh and the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the petition. They may be the proper parties.

25. This issue too is decided in favour of the petitioner.

## ISSUE NO. 4

26. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No. 4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court *vide* judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the

observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

27. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

28. This issue is also decided in favour of the petitioner and against the respondent.

### **RELIEF (ISSUE NO. 6)**

29. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No.	:	334/2012
Date of Institution	:	03.9.2012
Date of Decision	:	01.11.2013

Smt. Mansa Devi w/o Shri Puran Singh, r/o Village Talkher, P.O. Ahju, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Smt. Mansa Devi W/O Shri Puran Singh, R/O Village Talkher, P.O. Ahju, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during November, 1998 to 31-08-2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 06.10.1998 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) *w.e.f.* 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 06.10.1998 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter *i.e.* Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems

the petitioner fit under the facts and circumstances stated *supra* may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of November, 1998. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning *w.e.f.* 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar, who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on her verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, she was duly informed that she has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to her (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to her. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now she is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. She did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, she was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to her (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. Her (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to her have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 20.3.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time as per the reference is illegal and unjustified as alleged?  
.. *OPP.*



2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Not pressed
Issue No. 3	:	No
Issue No. 4	:	No
Relief.	:	Claim petition allowed in part <i>vide</i> operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Smt. Mansa Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was conveyed to her and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions *i.e.* Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even

now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and she is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 25.11.1998.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions *i.e.* Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the month of November, 1998 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and/continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

**ISSUE NO. 2**

19. Not pressed.

**ISSUE NO. 3**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No. 4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court *vide* judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given her age as 44 years. It is well known that a young lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

**ISSUE NO. 4**

23. Taking into account my findings on the issues No.1 and 3 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

24. This issue too is decided in favour of the petitioner and against the respondent.

**RELIEF (ISSUE NO. 5)**

25. As a sequel to my findings on the issues No. 1, 3 and 4 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 348/2012  
Date of Institution : 17.9.2012  
Date of Decision : 01.11.2013

Shri Bainsi Chand s/o Shri Jangi Ram, r/o Village Kavar, P.O. Balh-Kavar, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Shri Bainsi Chand S/O Shri Jangi Ram, R/O Village Kavar, P.O. Balh-Kavar, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during September, 1999 to 31-08-2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 09.9.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him

(petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 09.9.1999 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated *supra* may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:—

“1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during *w.e.f.* 03/09/1999 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning *w.e.f.* January, 2004. No illegal or intentional breaks have been given to applicant by this division.

2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division *w.e.f.* January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.

3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service of Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Pardeep Kumar S/O Sh. Roshan Lal, Sh. Kishori Lal S/o Sh. Raghubir, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram, Sh. Nihal Chand S/o Sh. Devi Ram, Sh. Anil Kumar S/o Sh. Mangat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.

4. That the contents of the Para are admitted to extent that applicant has been engaged on works w.e.f. 1/09/2007 continuous as per H.P. Govt Policy.

5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning w.e.f., Jan 2004. More over the applicant was initially engaged with out following proper procedure and as per the decision of Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Shrama Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed with out following proper procedure, there is no liability on the Govt. to regularize such official.

6. That the contents of this Para are not admitted. This division is functioning w.e.f. Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.

7. That the contents of this para are denied.

8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period he has not worked in this department.

9. Para being of judicial nature. Hence no comments.

10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 24.4.2013, following issues were struck:
1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during September, 1999 to 31.08.2007 is illegal and unjustified as alleged? ..*OPP*.
  2. Whether the petition is not maintainable in the present form? ..*OPR*.
  3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*.
  4. Relief.
  6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
  7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Bainsi Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions *i.e.* Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway

Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional *w.e.f.* 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of September, 1999. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent\ (RW1), it can be gathered that two B&R Sub Divisions *i.e.* Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B



of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court *vide* judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 53 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 4)**

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 352/2012  
Date of Institution : 17.9.2012  
Date of Decision : 01.11.2013

Shri Sohan Singh s/o Shri Hachhu Ram, r/o Village and P.O. Khaddar, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Shri Sohan Singh S/O Shri Hachhu Ram, R/O Village and P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during September, 1999 to 31-08-2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 08.6.1998 by the HPPWD in the National

Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement upto 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 08.6.1998 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:—

“1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during *w.e.f.* Oct. 1998 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning *w.e.f.* January, 2004. No illegal or intentional breaks have been given to applicant by this division.

2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division *w.e.f.* January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.

3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service of Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Pardeep Kumar S/O Sh. Roshan Lal, Sh. Kishori Lal S/o Sh. Raghubir, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram, Sh. Nihal Chand S/o Sh. Devi Ram, Sh. Anil Kumar S/o Sh. Mangat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.

4. That the contents of the Para are admitted to extent that applicant has been engaged on works w.e.f. 1/09/2007 continuous as per H.P. Govt Policy.

5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning w.e.f., Jan 2004. More over the applicant was initially engaged with out following proper procedure and as per the decision of Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Shrama Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed with out following proper procedure, there is no liability on the Govt. to regularize such official.

6. That the contents of this Para are not admitted. This division is functioning w.e.f. Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.

7. That the contents of this para are denied.

8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period he has not worked in this department.

9. Para being of judicial nature. Hence no comments.

10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 24.4.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during September, 1999 to 31.08.2007 is illegal and unjustified as alleged? ..*OPP*.

2. Whether the petition is not maintainable in the present form? ..*OPR*.

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? .. *OPR*.

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Sohan Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions *i.e.* Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the

petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1998 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of October, 1998. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the month of September, 1999 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of Sept., 1999 to 31st August, 2007, as per the provisions contained in Section 25-B of the

Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 4)**

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of September, 1999 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 371/2012

Date of Institution : 29.11.2012

Date of Decision : 01.11.2013

Shri Gian Chand s/o Shri Masadi Ram, r/o Village Kayar, Post Office Balh-Kayar, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, HPPWD Division, Joginder Nagar, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Gian Chand S/O Sh. Masadi Ram, Village Kayar, Post Office Balh-Kayar, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time as beldar during May, 2000 to 31-08-2007 by The Executive Engineer HPPWD Division Joginder Nagar, Distt. Mandi H.P. without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.4.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his



initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.4.1999 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:—

“1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during w.e.f. 06/09/2000 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning w.e.f. January, 2004. No illegal or intentional breaks have been given to applicant by this division.

2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division w.e.f. January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.

3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the

service of Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Pardeep Kumar S/O Sh. Roshan Lal, Sh. Kishori Lal S/o Sh. Raghubir, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram, Sh. Nihal Chand S/o Sh. Devi Ram, Sh. Anil Kumar S/o Sh. Mangat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.

4. That the contents of the Para are admitted to extent that applicant has been engaged on works w.e.f. 1/09/2007 continuous as per H.P. Govt Policy.

5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning w.e.f., Jan 2004. More over the applicant was initially engaged without following proper procedure and as per the decision on Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Shrama Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed without following proper procedure, there is no liability on the Govt. to regularize such official.

6. That the contents of this Para are not admitted. This division is functioning w.e.f. Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.

7. That the contents of this para are denied.

8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period he has not worked in this department.

9. Para being of judicial nature. Hence no comments.

10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 20.3.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time as per the reference is illegal and unjustified as alleged? ..*OPP*.
2. Whether the petition is not maintainable in the present form? ..*OPR*.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*.
4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR*.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Gian Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for

HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of September, 2000. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the month of September, 2000 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The

petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of September, 2000 to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 49 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 4**

23. Taking into account my findings on the issues No.1 and 3 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

24. This issue too is decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 5)**

25. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to

31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of September, 2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 345/2012  
Date of Institution : 17.9.2012  
Date of Decision : 01.11.2013

Shri Achhar Singh s/o Shri Sudama Ram, r/o Village Kathon, P.O. Panjalag, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Shri Achhar Singh S/O Shri Sudama Ram, R/O Village Kathon, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during November, 1997 to 31-08-2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 28.9.1997 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 28.9.1997 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:—

“1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during w.e.f. Oct. 1998 by the Executive Engineer, National Highway

Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning w.e.f. January, 2004. No illegal or intentional breaks have been given to applicant by this division.

2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division w.e.f. January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.

3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service of Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Pardeep Kumar S/O Sh. Roshan Lal, Sh. Kishori Lal S/o Sh. Raghubir, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram, Sh. Nihal Chand S/o Sh. Devi Ram, Sh. Anil Kumar S/o Sh. Mangat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.

4. That the contents of the Para are admitted to extent that applicant has been engaged on works w.e.f. 1/09/2007 continuous as per H.P. Govt Policy.

5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning w.e.f., Jan 2004. More over the applicant was initially engaged without following proper procedure and as per the decision of Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Shrama Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed without following proper procedure, there is no liability on the Govt. to regularize such official.

6. That the contents of this Para are not admitted. This division is functioning w.e.f. Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.

7. That the contents of this para are denied.

8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period he has not worked in this department.

9. Para being of judicial nature. Hence no comments.

10. Matter being legal in nature, hence no comments".



In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 24.4.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during November, 1997 to 31.08.2007 is illegal and unjustified as alleged? ..*OPP*.
2. Whether the petition is not maintainable in the present form? ..*OPR*.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*.
4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

8. Shri Achhar Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the

artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions *i.e.* Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of October, 1998. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions *i.e.* Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D),

were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 36 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 4)**

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to

31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month/date of his initial engagement i.e. October, 1998, except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 385/2012  
Date of Institution : 14.12.2012  
Date of Decision : 01.11.2013

Shri Joginder Singh s/o Shri Gulab Singh, r/o Village Sanahli, P.O. Tullah, Tehsil Joginder Nagar, Distt. Mandi, H.P. .. Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Joginder Singh S/O Shri Gulab Singh, R/O Village Sanahli, P.O. Tullah, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during April, 1999 to 31-08-2007 by The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.4.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.4.1999 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:—

“1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during w.e.f. April, 1999 by the Executive Engineer, National Highway

Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning w.e.f. January, 2004. No illegal or intentional breaks have been given to applicant by this division.

2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division w.e.f. January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.

3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service of Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Pardeep Kumar S/O Sh. Roshan Lal, Sh. Kishori Lal S/o Sh. Raghubir, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram, Sh. Nihal Chand S/o Sh. Devi Ram, Sh. Anil Kumar S/o Sh. Mangat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.

4. That the contents of the Para are admitted to extent that applicant has been engaged on works w.e.f. 1/09/2007 continuous as per H.P. Govt Policy.

5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning w.e.f., Jan 2004. More over the applicant was initially engaged without following proper procedure and as per the decision of Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Shrama Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed without following proper procedure, there is no liability on the Govt. to regularize such official.

6. That the contents of this Para are not admitted. This division is functioning w.e.f. Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.

7. That the contents of this para are denied.

8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period he has not worked in this department.

9. Para being of judicial nature. Hence no comments.

10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 24.4.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during April, 1999 to 31.08.2007 is illegal and unjustified as alleged? ..*OPP*.

2. Whether the petition is not maintainable in the present form? ..*OPR*.

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*.

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

8. Shri Joginder Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions *i.e.* Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of April, 1999. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions *i.e.* Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner



with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court *vide* judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 47 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 4)**

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages.

The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 326/2012

Date of Institution : 03.9.2012

Date of Decision : 01.11.2013

Smt. Sawarna Devi w/o Shri Chuhar Singh, r/o Village and P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Smt. Sawarna Devi W/O Shri Chuhar Singh, R/O Village and P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during February, 1999 to 31-08-2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the

provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 01.02.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 01.02.1999 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get the employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. Her services were engaged pursuant to the verbal requests made by her (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:—

“1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during w.e.f. 01/1999 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning w.e.f. January, 2004. No illegal or intentional breaks have been given to applicant by this division.

2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division w.e.f. January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.

3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service of Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram s/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.

4. That the contents of the Para are admitted to extent that applicant has been engaged on works w.e.f. 1/09/2007 continuous as per H.P. Govt Policy.

5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning w.e.f., Jan 2004. More over the applicant was initially engaged with out following proper procedure and as per the decision on Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Shrama Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed with out following proper procedure, there is no liability on the Govt. to regularize such official.

6. That the contents of this Para are not admitted. This division is functioning w.e.f. Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.

7. That the contents of this para are denied.

8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period she has not worked in this department.

9. Para being of judicial nature. Hence no comments.

10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to her (petitioner) was handed over by the National Highway Division to

the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. Her (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to her have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 19.01.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during February, 1999 to 31-08-2007 is illegal and unjustified as alleged? ..*OPP*.

2. Whether the claim petition is not maintainable in the present form? ..*OPR*.

3. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*.

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Smt. Sawarna Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was conveyed to her and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Sh. Dalip Singh and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and she is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of January, 1999. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of her initial engagement to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given her age as 57 years. It is well known that a lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 4)**

23. As a sequel to my findings on the issues No.1 and 3, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been

regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 349/2012

Date of Institution : 17.9.2012

Date of Decision : 01.11.2013

Shri Mahajan Ram s/o Shri Kanhiya Ram, r/o Village Lower Makan, P.O. Utpur, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Shri Mahajan Ram S/O Shri Kanhiya Ram, R/O Village Lower Makan, P.O. Utpur, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during July, 1999 to 31-08-2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount



back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.6.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.6.1999 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:—

“1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during w.e.f. 07/07/1999 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning w.e.f. January, 2004. No illegal or intentional breaks have been given to applicant by this division.

2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division *w.e.f.* January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.

3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service of Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Pardeep Kumar S/O Sh. Roshan Lal, Sh. Kishori Lal S/o Sh. Raghubir, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram, Sh. Nihal Chand S/o Sh. Devi Ram, Sh. Anil Kumar S/o Sh. Mangat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.

4. That the contents of the Para are admitted to extent that applicant has been engaged on works *w.e.f.* 1/09/2007 continuous as per H.P. Govt Policy.

5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning *w.e.f.*, Jan 2004. More over the applicant was initially engaged with out following proper procedure and as per the decision of Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Shrama Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed with out following proper procedure, there is no liability on the Govt. to regularize such official.

6. That the contents of this Para are not admitted. This division is functioning *w.e.f.* Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.

7. That the contents of this para are denied.

8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period he has not worked in this department.

9. Para being of judicial nature. Hence no comments.

10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 24.4.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during July, 1999 to 31.08.2007 is illegal and unjustified as alleged? ..*OPP*.

2. Whether the petition is not maintainable in the present form? ..*OPR*.

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*..

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

8. Shri Mahajan Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of July, 1999. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner

with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 58 years. It is well known that a man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 4)**

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages.

The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 349/2012  
Date of Institution : 17.9.2012  
Date of Decision : 01.11.2013

Shri Mahajan Ram s/o Shri Kanhiya Ram, r/o Village Lower Makan, P.O. Utpur, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Shri Mahajan Ram S/O Shri Kanhiya Ram, R/O Village Lower Makan, P.O. Utpur, Tehsil Joginder Nagar, District

Mandi, H.P. from time to time during July, 1999 to 31-08-2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.6.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.6.1999 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds. On merits, paras 1 to 10 of the reply read thus:—

"1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during w.e.f. 07/07/1999 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning w.e.f. January, 2004. No illegal or intentional breaks have been given to applicant by this division.

2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division w.e.f. January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.

3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service of Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Pardeep Kumar S/O Sh. Roshan Lal, Sh. Kishori Lal S/o Sh. Raghubir, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram, Sh. Nihal Chand S/o Sh. Devi Ram, Sh. Anil Kumar S/o Sh. Mangat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.

4. That the contents of the Para are admitted to extent that applicant has been engaged on works w.e.f. 1/09/2007 continuous as per H.P. Govt Policy.

5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning w.e.f., Jan 2004. More over the applicant was initially engaged without following proper procedure and as per the decision of Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Shrama Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed without following proper procedure, there is no liability on the Govt. to regularize such official.

6. That the contents of this Para are not admitted. This division is functioning w.e.f. Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.

7. That the contents of this para are denied.

8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period he has not worked in this department.

9. Para being of judicial nature. Hence no comments.

10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.



4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 24.4.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during July, 1999 to 31.08.2007 is illegal and unjustified as alleged? ..*OPP*.

2. Whether the petition is not maintainable in the present form? ..*OPR*.

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*.

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Mahajan Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of July, 1999. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner

with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 58 years. It is well known that a man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 4)**

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages.

The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 331/2012  
Date of Institution : 03.9.2012  
Date of Decision : 01.11.2013

Smt. Bhajni Devi w/o Shri Devi Lal, r/o Village and P.O. Drahal, Tehsil Joginder Nagar,  
District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P.  
*..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Smt. Bhajni Devi W/O Shri Devi Lal, R/O Village and P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. from

time to time during November, 1999 to 31-08-2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 01.12.1998 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 01.12.1998 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of November, 1998. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and

some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar, who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on her verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, she was duly informed that she has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to her (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to her. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now she is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. She did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, she was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to her (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. Her (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to her have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 20.3.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time as per the reference is illegal and unjustified as alleged? ..*OPP.*
2. Whether the petition is not maintainable in the present form? ..*OPR.*
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*
4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Not pressed
Issue No. 3	:	No
Issue No. 4	:	No
Relief.	:	Claim petition allowed in part <i>vide</i> operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Smt. Bhajni Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was conveyed to her and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and she is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 25.11.1998.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the month of November, 1999 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of November, 1999 to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP



No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given her age as 53 years. It is well known that a young lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

#### **ISSUE NO. 4**

23. Taking into account my findings on the issues No.1 and 3 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

24. This issue too is decided in favour of the petitioner and against the respondent.

#### **RELIEF (ISSUE NO. 5)**

25. As a sequel to my findings on the issues No. 1, 3 and 4 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the month of November, 1999, except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 376/2012

Date of Institution : 29.11.2012

Date of Decision : 01.11.2013

Shri Dhani Ram s/o Shri Bholu Ram, r/o Village Lahnga, P.O. Drahal, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division, Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Dhani Ram S/O Sh. Bholu Ram, Village – Lahnga, P.O. Drahal, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time as beldar during during Jan., 1998 to 31-08-2007 by The Executive Engineer, HPPWD Division Joginder Nagar, Distt. Mandi, H.P. by without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.1.1998 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.1.1998 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain.

During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of January, 1999. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 24.5.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the month of Jan., 1998 to 31-08-2007 is/was illegal and unjustified as alleged? ..*OPR.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Dhani Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the

payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions *i.e.* Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed w.e.f. 06.1.1999. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions *i.e.* Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the month of January, 1999 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the

budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 1999 to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 4**

23. Taking into account my findings on the issues No.1 and 3 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

24. This issue too is decided in favour of the petitioner and against the respondent.

### RELIEF (ISSUE NO. 5)

25. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 1999 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 262/2012  
Date of Institution : 29.06.2012  
Date of Decision : 13.11.2013

Shri Pawan Kumar s/o Shri Deena Nath, r/o Village Bari Majherwin, P.O. and Tehsil Ghumarwin, District Bilaspur, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division Ghumarwin, District Bilaspur, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Pawan Kumar S/O Shri Deena Nath, R/O Village Bari Majherwin, P.O. and Tehsil Ghumarwin, District Bilaspur, H.P. by the Executive Engineer, H.P.P.W.D. Division, Ghumarwin, District Bilaspur, H.P. *w.e.f.* October, 1998 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and amount of compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 16.6.1997. He continuously worked as such with the respondent/department up-to the month of October, 1998. During the last days of October, 1998, his services were disengaged by the respondent without assigning any reason and issuing any notice which amounts to unfair labour practice. In the seniority list of daily wagers prepared by the respondent, the names of 572 workmen have been recorded. His name figures at serial No.483 of the said list. As per the seniority list, 90 persons junior to him are still working with the respondent/department. Besides them, five other junior persons namely Sh. Nikka Ram and Sh. Pyare Lal etc. are serving the respondent. The latter failed to adhere to the principle of ‘last come first go’. Not only this, after his disengagement, new/fresh hands were engaged by the respondent. He was not given an opportunity of reemployment. Permanent work is available with the respondent/department. He (petitioner) preferred Original Application No.602/1999 before the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal against the retrenchment order. Such Original Application was dismissed by the Hon’ble Administrative Tribunal on 01.10.2004 with the remarks that it has no jurisdiction to deal with the same. Thereafter, he (petitioner) served a demand notice upon the respondent. Conciliation proceedings were initiated by the District Employment Officer-cum-Conciliation Officer, Bilaspur, but in vain. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the termination order passed by the respondent in the month of October, 1998 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action. The petition is bad on account of delay and laches on the part of the petitioner. The claim petition/reference is bad for non-joinder of the necessary parties *viz.* Deputy Commissioner, Bilaspur, who is/was the Incharge of the DRDA (District Rural Development Agency). The petitioner has misrepresented himself. He has concealed the material facts from the Court.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar in the month of June, 1997. However, it has been pleaded that in the year 1997 under the 8th Five Year Plan, a centrally sponsored scheme known as Employment Assurance Scheme (‘EAS’ in short) was implemented in Ghumarwin development block of Bilaspur District. As per the scope of the scheme, it was to operate in the rural areas of 1752 blocks and 257 districts situated in drought prone area, desert area, tribal area and hill area of the country. Under the EAS, assured



employment of 100 days was to be provided during the lean agriculture season to the rural poor who were in need of the employment and seeking the same. The implementing authority of the scheme *i.e.* Deputy Commissioner, Bilaspur, as per Chapter 3 of the scheme, released the funds per letter dated 17.3.1997 in his (respondent's) favour. He (respondent) was one of the implementing agencies under the EAS. With the release of the funds by the implementing authority to him (respondent), he provided assured employment to as many as 572 rural masses of Ghumarwin development block in a phased manner being the implementing agency. The services of those persons were engaged under the EAS who sought employment assistance under the scheme. The petitioner was also employed under the scheme. His name figures at serial No.483 of the list of the workmen whose services were engaged under the EAS. On account of non availability of the budget, the services of the workmen (including the petitioner), who were employed under EAS, could not be continued beyond October, 1998. Since the engagement of the petitioner was under a specific scheme, the discontinuation of his services for want of sanction/funds by the implementing authority or closure of the scheme does not amount to unfair labour practice. Of late, the Government of India has again introduced a similar rural employment guarantee scheme under the name and style of MNREGA for rural/poor masses of the whole country. No intentional breaks in service were provided to the petitioner at any point of time. He did not complete 240 days of continuous service as claimed. The instant industrial dispute has been raised by the petitioner at a belated stage. The services of some of the workmen have been reengaged as per the orders passed by the Hon'ble Administrative Tribunal. The petitioner cannot claim parity with the workmen who completed 240 days of work as per Section 25-B of the Act. He (petitioner) is also debarred from claiming parity with the labourers whose services were engaged by him (respondent) for normal functioning, operation and routine development activities carried out under the plan and non plan expenditure of the State of Himachal Pradesh. No provision of the Act has been flouted. The services of the petitioner could not be continued for want of the release of funds under the EAS by the implementing authority (Deputy Commissioner). The petitioner is gainfully employed as an agriculturist and cook in a private school. He is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that his services were engaged for the laying/construction and repair of the road(s). He was not employed in any scheme.

5. Per order dated 25.02.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent during the month of October, 1998 is illegal and unjustified as alleged? ..*OPP.*
2. Whether the petitioner has a cause of action? ..*OPP.*
3. Whether the claim petition is not maintainable in the present form? ..*OPR.*
4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*
6. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..*OPR.*

7. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Issue No. 5 : Not pressed

Issue No. 6 : Not pressed

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Pawan Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he and 571 other labourers were engaged under a scheme. He admitted that he worked upto the month of October, 1998. Self stated, his services were disengaged by the respondent on the pretext that the budget is not available. He denied that he has instituted a phoney petition to gain the employment and other undue benefits.

9. Conversely, Shri Prakash Chand, Executive Engineer, HPPWD Division, Ghumarwin (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the persons junior to the petitioner are working under him. Volunteered, their services have been re-engaged as per the orders of the Court. When the petitioner was employed, no appointment letter was issued in his name to the effect that his services have been engaged in a scheme. When the persons junior to the petitioner were engaged, an opportunity of re-employment was not afforded to the petitioner. He denied that the services of the petitioner were disengaged in an unlawful manner.

10. Ex. PW1/B is the seniority list of daily waged workers engaged under the Employment Generation Scheme. It corresponds to Ex. RW1/D. The list(s) indicate that in all 572 persons were appointed by the respondent under the EAS. The name of the petitioner figures at serial No. 483 of the seniority lists.

11. Ex. RW1/B is the copy of the outlines and objectives of EAS.

12. Ex. RW1/C is the copy of an office order dated 17th March, 1997 issued by the Deputy Commissioner, Bilaspur. It depicts that the funds under the EAS were released so that assured employment of 100 days is provided to the rural poor.

13. Exts. RW1/E to J are the mandays charts relating to Shri Pawan Kumar (petitioner), Shri Nikka Ram, Shri Lekh Ram, Shri Anil Kumar, Shri Pyare Lal and Shri Chaman Lal, respectively.

14. Ex. RW1/K is the copy of the order/judgment passed on 05.1.1999 by the Hon'ble Administrative Tribunal in O.A. No.1919/1998 titled as Shri Nikka Ram versus State of Himachal Pradesh through Secretary (Public Works Department) to the Govt. of Himachal Pradesh, Shimla and another.

15. Ex. RW1/L is the copy of the order dated April 22, 1999 pronounced by the Hon'ble Administrative Tribunal in O.A. No.718/1999 titled as Lekh Ram versus State of Himachal Pradesh through Secretary, (PWD) to the Govt. of Himachal Pradesh, Shimla and another.

16. Ex. RW1/M is the copy of the order dated 06.9.1999 passed by the Hon'ble Administrative Tribunal in O.A. No. 721/1999 titled as Sh. Anil Kumar versus The State of Himachal Pradesh, through Secretary (Public Works Department) and another.

17. Ex. RW1/N is the copy of the order dated 23.4.1999 passed by the Hon'ble Administrative Tribunal in O.A. No. 607/1999 titled as Sh. Pyare Lal versus The State of Himachal Pradesh, through Secretary (PWD) and another.

18. Ex. RW1/O is the copy of the order/judgment dated April 22, 1999 passed by the Hon'ble Administrative Tribunal in O.A. No.722/1999 titled as Shri Chaman Lal versus State of Himachal Pradesh through Secretary (PWD) and another.

19. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar by the respondent w.e.f. 16.6.1997 and he worked as such up-to the month of October, 1998. In the reply, the respondent has nowhere pleaded that the workman/petitioner was put to notice that his employment is/was in a project (EAS) and the period of engagement is/was coterminous with the project. The respondent (RW1) also did not utter a single word to the effect that at the time of the appointment of the petitioner, he was duly informed that his services have been engaged in a project/scheme and the same will come to an end on the closure of the project/scheme. It is the admitted case of the respondent that the services of the petitioner were disengaged in the month of October, 1998 because the funds under the EAS were not released by the implementing authority viz. Deputy Commissioner, Bilaspur.

20. Ex. RW1/E i.e. the mandays chart pertaining to the petitioner unfolds that he did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

21. From the seniority list Ex. PW1/B (corresponding to Ex. RW1/D), it can be gathered that at the time of the disengagement of the services of the petitioner, the persons junior to him were retained in service by the respondent. Some of the juniors even worked in the year 1999. This shows that the respondent failed to adhere to the principle of 'last come first go'. Not only this, the respondent has placed on the file the seniority list of daily waged/regular workers whose services were engaged under EAS and have been re-engaged as per the orders of the Court. The said list clarifies that the services of the persons junior to the petitioner namely Shri Akhilesh Kumar etc. have already been re-engaged by the respondent. RW1 admitted that the persons junior to the petitioner are serving under him. When the services of the persons junior to the petitioner were re-engaged, an opportunity of re-employment was not afforded to the petitioner. This clearly shows that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. For the

said reasons, the termination of the services of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his termination.

22. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

23. Keeping in mind my findings on issue No.1 above, it is held that the petitioner has a cause of action.

24. This issue is also decided in favour of the petitioner and against the respondent.

## **ISSUES NO. 3, 5 AND 6**

25. Not pressed.

## **ISSUE NO. 4**

26. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court *vide* judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

27. While testifying in the Court as PW1, the petitioner has given his age as 39 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Moreover, in his cross-examination, the petitioner (PW1) admitted that he makes both the ends meet by doing the work of agriculture. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. Due to these reasons, he is not entitled to the back wages.

28. This issue too is decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 7)**

29. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the

respondent is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. October, 1998 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 264/2012  
Date of Institution : 29.06.2012  
Date of Decision : 13.11.2013

Shri Roshan Lal s/o Shri Sita Ram, r/o Village Bari Majherwin, P.O. and Tehsil Ghumarwin, District Bilaspur, H.P. ..Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Division Ghumarwin, District Bilaspur, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Roshan Lal S/O Shri Sita Ram, R/O Village Bari Majherwin, P.O. and Tehsil Ghumarwin, District Bilaspur, H.P. by the Executive Engineer, H.P.P.W.D. Division, Ghumarwin, District Bilaspur, H.P. w.e.f. October, 1998 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits and amount of compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 16.6.1997. He continuously worked as such with the respondent/department up-to the month of October, 1998. During the last days of October, 1998, his services were disengaged by the respondent without assigning any reason and issuing any notice which amounts to unfair labour practice. In the seniority list of daily wagers prepared by the respondent, the names of 572 workmen have been recorded. His name figures at serial No.485 of the said list. As per the seniority list, 87 persons junior to him are still working with the respondent/department. Besides them, five other junior persons namely Sh. Nikka Ram and Sh. Pyare Lal etc. are serving the respondent. The latter failed to adhere to the principle of ‘last come first go’. Not only this, after his disengagement new/fresh hands were engaged by the respondent. He was not given an opportunity of reemployment. Permanent work is available with the respondent/department. He (petitioner) preferred Original Application No.1057/1999 before the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal against the retrenchment order. Such Original Application was dismissed by the Hon’ble Administrative Tribunal on 25.10.2004 with the remarks that it has no jurisdiction to deal with the same. Thereafter, he (petitioner) served a demand notice upon the respondent. Conciliation proceedings were initiated by the District Employment Officer-cum-Conciliation Officer, Bilaspur, but in vain. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the termination order passed by the respondent in the month of October, 1998, be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action. The petition is bad on account of delay and laches on the part of the petitioner. The claim petition/reference is bad for non-joinder of the necessary parties *viz.* Deputy Commissioner, Bilaspur, who is/was the Incharge of the DRDA (District Rural Development Agency). The petitioner has misrepresented himself. He has concealed the material facts from the Court.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar in the month of October, 1997. However, it has been pleaded that in the year 1997 under the 8th Five Year Plan, a centrally sponsored scheme known as Employment Assurance Scheme (‘EAS’ in short) was implemented in Ghumarwin development block of Bilaspur District. As per the scope of the scheme, it was to operate in the rural areas of 1752 blocks and 257 districts situated in drought prone area, desert area, tribal area and hill area of the country. Under the EAS, assured employment of 100 days was to be provided during the lean agriculture season to the rural poor who were in need of the employment and seeking the same. The implementing authority of the scheme *i.e.* Deputy Commissioner, Bilaspur, as per Chapter 3 of the scheme, released the funds per letter dated 17.3.1997 in his (respondent’s) favour. He (respondent) was one of the implementing agencies under the EAS. With the release of the funds by the implementing authority

to him (respondent), he provided assured employment to as many as 572 rural masses of Ghumarwin development block in a phased manner being the implementing agency. The services of those persons were engaged under the EAS who sought employment assistance under the scheme. The petitioner was also employed under the scheme. His name figures at serial No.485 of the list of the workmen whose services were engaged under the EAS. On account of non availability of the budget, the services of the workmen (including the petitioner) who were employed under EAS, could not be continued beyond October, 1998. Since the engagement of the petitioner was under a specific scheme, the discontinuation of his services for want of sanction/funds by the implementing authority or closure of the scheme does not amount to unfair labour practice. Of late, the Government of India has again introduced a similar rural employment guarantee scheme under the name and style of MNREGA for rural/poor masses of the whole country. No intentional breaks in service were provided to the petitioner at any point of time. He did not complete 240 days of continuous service as claimed. The instant industrial dispute has been raised by the petitioner at a belated stage. The services of some of the workmen have been reengaged as per the orders passed by the Hon'ble Administrative Tribunal. The petitioner cannot claim parity with the workmen who completed 240 days of work as per Section 25-B of the Act. He (petitioner) is also debarred from claiming parity with the labourers whose services were engaged by him (respondent) for normal functioning, operation and routine development activities carried out under the plan and non plan expenditure of the State of Himachal Pradesh. No provision of the Act has been flouted. The services of the petitioner could not be continued for want of the release of funds under the EAS by the implementing authority (Deputy Commissioner). The petitioner is gainfully employed as an agriculturist and cook in a private school. He is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that his services were engaged for the laying/construction and repair of the road(s). He was not employed in any scheme.

5. Per order dated 25.02.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent during the month of October, 1998 is illegal and unjustified as alleged? ..*OPP*.
2. Whether the petitioner has a cause of action? ..*OPP*.
3. Whether the claim petition is not maintainable in the present form? ..*OPR*.
4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*.
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR*.
6. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..*OPR*.
7. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Yes
Issue No. 3	:	Not pressed
Issue No. 4	:	No
Issue No. 5	:	Not pressed
Issue No. 6	:	Not pressed
Relief.	:	Claim petition allowed in part <i>vide</i> operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Roshan Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he and 571 other labourers were engaged under a scheme. He admitted that he worked upto the month of October, 1998. Self stated, his services were disengaged by the respondent on the pretext that the budget is not available. He denied that he has instituted a phoney petition to gain the employment and other undue benefits.

9. Conversely, Shri Prakash Chand, Executive Engineer, HPPWD Division, Ghumarwin (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the persons junior to the petitioner are working under him. Volunteered, their services have been re-engaged as per the orders of the Court. When the petitioner was employed, no appointment letter was issued in his name to the effect that his services have been engaged in a scheme. When the persons junior to the petitioner were engaged, an opportunity of re-employment was not afforded to the petitioner. He denied that the services of the petitioner were disengaged in an unlawful manner.

10. Ex. PW1/B is the seniority list of daily waged workers engaged under the Employment Generation Scheme. It corresponds to Ex. RW1/D. The list(s) indicate that in all 572 persons were appointed by the respondent under the EAS. The name of the petitioner figures at serial No.485 of the seniority lists.

11. Ex. RW1/B is the copy of the outlines and objectives of EAS.

12. Ex. RW1/C is the copy of an office order dated 17th March, 1997 issued by the Deputy Commissioner, Bilaspur. It depicts that the funds under the EAS were released so that assured employment of 100 days is provided to the rural poor.

13. Exts. RW1/E to J are the mandays charts relating to Shri Roshan Lal (petitioner), Shri Nikka Ram, Shri Lekh Ram, Shri Anil Kumar, Shri Pyare Lal and Shri Chaman Lal respectively.



14. Ex. RW1/K is the copy of the order/judgment passed on 05.1.1999 by the Hon'ble Administrative Tribunal in O.A. No.1919/1998 titled as Shri Nikka Ram versus State of Himachal Pradesh through Secretary (Public Works Department), to the Govt. of Himachal Pradesh, Shimla and another.

15. Ex. RW1/L is the copy of the order dated 22.4.1999 passed by the Hon'ble Administrative Tribunal in O.A. No.718/1999 titled as Lekh Ram versus State of Himachal Pradesh through Secretary (PWD) to the Govt. of Himachal Pradesh, Shimla and another.

16. Ex. RW1/M is the copy of the order dated April 22, 1999 pronounced by the Hon'ble Administrative Tribunal in O.A. No.718/1999 titled as Lekh Ram versus State of Himachal Pradesh and Anr.

17. Ex. RW1/N is the copy of the order dated 06.9.1999 passed by the Hon'ble Administrative Tribunal in O.A. No. 721/1999 titled as Sh. Anil Kumar versus The State of Himachal Pradesh, through Secretary (Public Works Department) and another.

18. Ex. RW1/O is the copy of the order dated 23.4.1999 passed by the Hon'ble Administrative Tribunal in O.A. No. 607/1999 titled as Sh. Pyare Lal versus The State of Himachal Pradesh through Secretary (PWD) and another.

19. Ex. RW1/P is the copy of the order/judgment dated April 22, 1999 passed by the Hon'ble Administrative Tribunal in O.A. No.722/1999 titled as Shri Chaman Lal versus State of Himachal Pradesh through Secretary (PWD) and another.

20. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar by the respondent in the year 1997 and he worked as such up-to the month of October, 1998. In the reply, the respondent has nowhere pleaded that the workman/petitioner was put to notice that his employment is/was in a project (EAS) and the period of engagement is/was coterminous with the project. The respondent (RW1) also did not utter a single word to the effect that at the time of the appointment of the petitioner, he was duly informed that his services have been engaged in a project/scheme and the same will come to an end on the closure of the project/scheme. It is the admitted case of the respondent that the services of the petitioner were disengaged in the month of October, 1998 because the funds under the EAS were not released by the implementing authority viz. Deputy Commissioner, Bilaspur.

21. Ex. RW1/E i.e. the mandays chart pertaining to the petitioner unfolds that he did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

22. From the seniority list Ex. PW1/B (corresponding to Ex. RW1/D), it can be gathered that at the time of the disengagement of the services of the petitioner, the persons junior to him were retained in service by the respondent. Some of the juniors even worked in the year 1999. This shows that the respondent failed to adhere to the principle of 'last come first go'. Not only this, the respondent has placed on the file the seniority list of daily waged/regular workers whose services were engaged under EAS and have been re-engaged as per the orders of the Court. The said list clarifies that the services of the persons junior to the petitioner namely Shri Jagar Nath etc. have already been re-engaged by the respondent. RW1 admitted that the persons junior to the petitioner are serving under him. When the services of the persons junior to the petitioner were re-engaged, an opportunity of re-employment was not afforded to the petitioner. This clearly shows that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. For the said

reasons, the termination of the services of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his termination.

23. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

24. Keeping in mind my findings on issue No.1 above, it is held that the petitioner has a cause of action.

25. This issue is also decided in favour of the petitioner and against the respondent.

## **ISSUES NO. 3, 5 AND 6**

26. Not pressed.

## **ISSUE NO. 4**

27. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court *vide* judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

28. While testifying in the Court as PW1, the petitioner has given his age as 47 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Moreover, in his cross-examination, the petitioner (PW1) admitted that he makes both the ends meet by doing the work of agriculture. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. Due to these reasons, he is not entitled to the back wages.

29. This issue too is decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 7)**

30. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the

respondent is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. October, 1998 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 219/2012  
Date of Institution : 17.04.2012  
Date of Decision : 13.11.2013

Shri Kamal Dev s/o Shri Govind, r/o Village Digthali, P.O. Suin Surhar, Tehsil Sadar, Distt. Bilaspur, H.P. ..Petitioner.

*Versus*

The President/Secretary, The Bilaspur District Truck Operators Transport Coop. Society Ltd. Barmana, Tehsil Sadar, Distt. Bilaspur, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B.S. Verma, Adv.  
For the Respondent : Sh. Ashwani Kumar, Adv.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Kamal Dev s/o Shri Govind, R/O Village-Digthali, P.O. Suin Surhar, Tehsil Sadar, Distt. Bilaspur, H.P. by The President/Secretary,

The Bilaspur District Truck Operators Transport Coop. Society Ltd. Barmana, Tehsil Sadar, Distt. Bilaspur, H.P. w.e.f. 04.5.2007 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what amount of back wages, seniority, past service benefits & compensation the above aggrieved workman is entitled to?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a Pujari by the respondent w.e.f. 23.4.2003 in a temple owned by it (respondent) at Barmana. He worked as such up-to 04.5.2007 as well as completed more than 240 days of work in a block of 12 calendar months preceding the date of his termination. Monthly wages of Rs.2,000/- were being paid to him by the respondent. On 4th May, 2007, his services were terminated by the respondent without assigning any cogent reason. During the service tenure his work and conduct was excellent. He was never asked to furnish the explanation for the misconduct, if any. Before the disengagement of his services, neither any show cause notice was given to him nor he was charge sheeted. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. At the time of the retrenchment of his services, the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. Not only this, after the termination of his services the respondent is regularly engaging the workers/pujaries to run the affairs of the temple. He was not afforded an opportunity of re-employment. The wrongful termination order passed by the respondent has made his (petitioner's) integrity doubtful in the eyes of the others. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the termination order dated 04.5.2007 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. This Court/Tribunal has no jurisdiction to hear and decide the matter. The petitioner was not a workman under him (respondent). It (society) is not the owner of the Durga temple situated at Barmana.

On merits, it has been denied that the services of the petitioner were engaged as a Pujari on 23.4.2003 on payment of Rs.2,000/- per mensem as wages. Since he (respondent) is not the owner of the temple, the question of engaging the services of the petitioner as a Pujari does not arise. No relationship of master and servant exists between the parties. The services of the petitioner were never terminated as alleged. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he (petitioner) was appointed as a Pujari by the respondent in the temple constructed and maintained by him (respondent). He did not leave the job voluntarily.

5. Per order dated 10.1.2013, following issues were struck:—

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 04.5.2007 is illegal and unjustified as alleged? ..OPP.

2. Whether the claim petition is not maintainable in the present form? ..*OPR.*
3. Whether this Court/Tribunal has no jurisdiction to hear and decide the matter? ..*OPR.*
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Yes

Relief. : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES NO. 1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Kamal Dev (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that neither his services were engaged by the respondent nor the latter paid him the salary at any point of time. He also denied that to gain the employment in an unlawful manner, he has instituted a phoney petition.

10. Conversely, Shri Raj Pal Gautam, who is the General Secretary of the society (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the 'Mandir' belongs to them and they look after its affairs. He also denied that he is deposing falsely.

11. Ex. RW1/B is the copy of the order dated 06.7.2002 passed by the Additional Registrar (Monitoring), Co-operative Societies, Himachal Pradesh, Shimla in the matter of surcharge proceedings relating to the respondent. In this order, it has been mentioned that Durga Mandir, Barmana is not the property of the society (respondent).

12. Since the petitioner has knocked the doors of this Court for the grant of various reliefs, a duty is cast upon him to prove his case.

13. The petitioner has not placed/exhibited on the file any document evidencing that his services were engaged by the respondent or the latter paid him the wages at any point of time. The

order dated 06.7.2002 passed by the Additional Registrar (Monitoring), Co-operative Societies, Himachal Pradesh, Shimla, the copy of which is Ex. RW1/B, unfolds that Durga Mandir is not the property of the society (respondent). Therefore, the question of engaging the services of the petitioner as a Pujari by the respondent in Durga Mandir, Barmana, does not arise. No relationship of employer and employee/workman exists between the parties.

14. As the petitioner has failed to establish the relationship of master and servant/workman, by no stretch of imagination, it can be said that the services of the petitioner were engaged and disengaged by the respondent. The claim petition is not maintainable. The petitioner is not entitled to any relief.

15. It appears to me that the avarice of the petitioner to grab the job and money has forced him to prefer a totally false and baseless claim. He is required to be shown the doors of the Court.

16. These issues are decided against the petitioner and in favour of his adversary.

### ISSUE NO. 3

17. Taking into account my findings on the issues No.1 and 2 above, it is held that this Court/Tribunal has no jurisdiction to hear and decide the matter.

18. This issue is also decided against the petitioner.

### RELIEF (ISSUE NO. 4)

19. As a sequel to my findings on the issues No.1 to 3, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No.	:	207/2012
Date of Institution	:	17.04.2012
Date of Decision	:	13.11.2013

Shri Mohan Lal s/o Shri Shiv Dayal, r/o Village & P.O. Jassourgarh, Tehsil Churah, Distt. Chamba, H.P. ..Petitioner.

*Versus*

The Divisional Forest Officer, Chamba, Distt. Chamba, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR  
: Sh. T.R. Bhardwaj, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Mohan Lal S/O Sh. Shiv Dayal, R/O Village & PO Jassourgarh, Tehsil Churah, Distt. Chamba, H.P. by The Divisional Forest Officer, Chamba, Distt. Chamba, (H.P.) from time to time during June 1996 to May, 2009 and finally w.e.f. 01.6.2009 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, seniority, past service benefits & compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on muster roll basis by the respondent in the month of June, 1996. He worked as such up-to 31.5.2009 in Tikri Forest Range. During the period of his employment, the respondent used to engage and disengage his services. The persons junior to him were retained in service continuously by the respondent/department. Artificial/fictional breaks from the date/month of initial engagement i.e. June, 1996 to 31.5.2009 were given by the respondent so that he (petitioner) does not complete 240 days of work. In the month of August, 2006, he was deployed at Goth Rakwa. While performing his duties, he was hit by a stone on 18.8.2006 which caused injury on the right leg. After the accident he was shifted to Tissa Hospital where he was admitted for treatment. He remained under treatment at Tissa Hospital up-to 22.11.2006. Thereafter, he was referred to District Hospital Chamba and from Chamba to IGMCM, Shimla. He remained as an indoor patient in IGMCM, Shimla from 23.11.2006 to 22.12.2006. After being discharged from the Hospital, he joined his duties in the month of January, 2007 and worked up-to the end of May, 2009. On 1st June, 2009, his services were finally terminated by the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor the wages in lieu of the notice period and the retrenchment compensation were paid. Even prior approval of the Government was not taken by the respondent before the disengagement of his services. At the time of his termination, the persons junior to him namely S/Sh. Jeet Singh and Hari Singh etc. were retained in service by the respondent. He (petitioner) never remained absent from his duties from the date of initial engagement till the date of final termination. The break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). Before effecting the termination of his services, the overall seniority list of the daily waged workmen working under the respondent was neither circulated nor got noted down from the concerned labourers. The respondent failed to abide by the principle of ‘last come first go’. The procedure for re-employment of retrenched workmen has also not been followed by the respondent. If his services would not have been

terminated illegally, he would have completed eight years of continuous service on 31.12.2004. Under the eight years regularization policy or 10 years regularization policy of the Government he is/was entitled to the regularization of his services w.e.f. 1st January, 2007 as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhyay's case. The persons junior to him have already been regularized by the respondent/department. He has suffered heavy financial loss because of the act and conduct of the respondent. He (petitioner) has spot less service record. Before the termination of his services, neither he was charge sheeted nor an inquiry was conducted against him. An opportunity of personal hearing was also not afforded to him by the respondent. From the date of his disengagement, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“a) The oral order of termination of my services passed by the respondent in the end of 8/1996, 12/1998, 1/2000, 2/2003, 1/2004, end of 5/2004, 1st Sep. 2004, end of 12/2004, 1st Oct. 2005, end of 12/2005, end of 3/2006 and finally w.e.f. 01.06.2009 be set-aside being illegal, arbitrary and un-justified.

b) To direct the respondent to re-instate the services of petitioner w.e.f. the date of my illegal termination alongwith full back wages, seniority including continuity of services as the petitioner remained un-employed since the date of illegal retrenchment/termination of services.

c) To direct the respondent to count the period of intermittent breaks given in service to the applicant/petitioner from time to time be counted towards the calculation of continuous service of 240 days in each calendar year under Section 25-B of ID Act and regularize the services of the petitioner w.e.f. 01.01.2005 or 01.01.2007 alongwith all consequential benefits.

d) To direct the respondent for the production of original record pertaining to the case of petitioner.

e) To direct the respondent to re-engage petitioner on muster roll basis pending final decision of the case.

f) Any other relief as the Hon'ble court may deem fit”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner was provided continuous work for the whole year as per Section 25-B of the Act. He has no enforceable cause of action. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged in the month of June, 1996. However, it has been pleaded that the petitioner was employed as a casual daily waged worker for seasonal forestry works in Tikri Range. The mandays chart of the petitioner is annexure R1. It discloses that except the years 2000, 2001 and 2002, the petitioner did not complete 240 days of continuous service in any calendar year of his engagement. As and when the petitioner presented himself the work was provided to him subject to availability of the work and the funds.



No artificial/fictional breaks were provided to the petitioner as alleged. He did not work up-to the month of May, 2009 as claimed. The petitioner was an intermittent worker. He used to report for duty as per his convenience and sweet will. The petitioner used to absent from his duties and did not work for the complete month(s) as and when the work for the whole month was given to him. Forestry works like plantation and sowing etc. are mostly seasonal. The work cannot be provided during the lean season. The workers are called with the opening of every fresh season. Discontinuation of work during the lean season does not amount to disengagement or termination. The petitioner did not report for duty during the working season despite the fact that muster rolls were issued in his name. The petitioner was never deployed in Goth Rakwa where he met with an accident. He (petitioner) was not serving in the month of August, 2006. Therefore, his claim that he suffered an injury on 18.8.2006 while being on duty is totally false. Moreover, in the demand notice dated 05.4.2010, the date of accident/injury has been mentioned as 24.8.2006. The petitioner neither reported the injury to his (respondent's) office at the relevant time nor applied for leave on the said count. The petitioner finally abandoned the job in the month of August, 2008. Thus, the question of the termination of his services on 01.6.2009 does not arise. The petitioner is debarred from claiming parity with the workmen who worked in continuity. No person junior to the petitioner has been retained in service or engaged/re-engaged. The workmen whose names have been disclosed by the petitioner, are not on his (respondent's) rolls. The petitioner does not fulfill the criteria for the regularization of his services as per the prevailing policy of the Government. No provision of the Act has been flouted. Since the petitioner voluntarily left the service, he is not entitled to any protection under the Act. The petitioner is gainfully employed privately. He also works as an agriculturist. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that he never absented from his duties or abandoned the job. He was not a casual/seasonal worker.

5. Per order dated 22.03.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent from time to time during June, 1996 to May, 2009 is illegal and unjustified as alleged? ..*OPP.*
2. Whether the final termination of the services of the petitioner by the respondent w.e.f. 01.6.2009 is illegal and unjustified as alleged? ..*OPP.*
3. Whether the petitioner has a cause of action? ..*OPP.*
4. Whether the petition is not maintainable in the present form? ..*OPR.*
5. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..*OPR.*
6. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

7. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : Yes

Issue No. 5 : Not pressed

Issue No. 6 : No

Relief. : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES NO. 1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Mohan Lal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he cannot produce any record to show that he served the respondent/department up-to the month of May, 2009 and received the wages. He denied that he worked only up-to the month of August, 2008. He also denied that he did not sustain injury while being on duty and on inquiry, it surfaced that he suffered from the snake bite. He denied that he used to remain absent from his duties time and again as well as voluntarily left the service. Further, he denied that S/Sh. Surinder Kumar and Karam Singh are not serving the respondent as well as he has instituted a phoney petition to gain the employment and other undue benefits.

10. Conversely, Shri Kripa Shankar, Divisional Forest Officer, Chamba (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that artificial breaks in service were provided to the petitioner from time to time. He also denied that the services of the petitioner were terminated unlawfully. When the petitioner left the job, no notice was given to him calling upon him to resume his duties. Even no departmental proceedings were initiated against the petitioner.

11. Ex. PW1/B is the copy of the reply submitted by the respondent/employer before the Labour Officer-cum-Conciliation Officer, Chamba, during the conciliation proceedings.

12. Ex. PW1/C is the mandays chart relating to Shri Surinder Kumar s/o Shri Tej Singh. It corresponds to Ex. RW1/A.

13. Ex. PW1/D is the seniority list/mandays chart pertaining to Shri Karam Singh s/o Shri Madho Ram. It corresponds to Ex. RW1/B.

14. Ex. PW1/E is the copy of discharge slip. It shows that the petitioner was admitted to IGM, Shimla on 23.11.2006 and discharged on 22.12.2006.

15. Ex. PW1/F is the mandays chart qua the petitioner.

16. Exts. RW1/C to H are the mandays charts in respect of Smt. Gurdei, Sh. Bir Chand, Smt. Musurbu, Sh. Moti Ram, Sh. Hari Singh and Shri Jeet Singh, respectively.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of June, 1996. The said fact finds support from the mandays chart Ex. PW1/F (produced by the petitioner) which is not in dispute. The respondent has not placed/exhibited on the file any document to prove that the services of the petitioner were engaged as a casual labourer for carrying out the seasonal forestry works only to his knowledge.

18. The version of the petitioner is that from the date/month of his initial appointment i.e. June, 1996 to 31st May, 2009 intentional breaks in service were provided to him by the respondent/department from time to time. On 01.6.2009, his services were finally terminated by the respondent by an oral order wrongly and illegally. While denying these facts, the respondent has pleaded that the petitioner was an intermittent worker who used to work as per his sweet will and convenience. No artificial/fictional breaks in service were provided to the petitioner at any point of time and he (petitioner) left the job of his own accord and free volition in the month of August, 2008.

19. As already mentioned, the mandays chart Ex. PW1/F is not in dispute. Its perusal discloses that from August, 1996 to June, 1998, the petitioner did not work for a single day. In some years he served for less than 200 days. In the years 2000, 2001 and 2002 only the petitioner served the respondent/department for more than 240 days. If artificial breaks in service were provided to the petitioner by the respondent from the date/month of his initial engagement till the years 2008-2009 then why he did not object to the same earlier or at the time of receipt of the payment for the working days put in by him? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. Rather, the mandays chart clarifies that despite the issuance of the muster rolls in favour of the petitioner, he used to remain absent from his duties. Sometimes, he did not attend to his duties for 20 or more days despite the fact that the muster roll for the entire month was issued in his name by the respondent/department. The petitioner cannot be permitted to take the advantage of his wrongs. Taking into account the act and conduct of the petitioner, I feel that by no stretch of imagination, it can be said that intentional breaks in service were provided to him by the respondent as claimed.

20. Now I proceed to discuss the other controversy between the parties viz. the alleged final termination of the services of the petitioner by the respondent on June 1, 2009.

21. At the cost of reiteration, I will like to add that the mandays chart Ex. PW1/F has been produced by the petitioner. The same is not in dispute. Browsing of Ex. PW1/F reveals that the petitioner served the respondent only up-to the month of August, 2008. In August, 2008, he worked for 25 days with six absents. From 1st September, 2008 onwards the petitioner is not on the rolls of the respondent. Therefore, the assertion of the petitioner that he served the respondent continuously up-to 31.5.2009 is patently wrong and baseless. Since the petitioner did not work up-to 31.5.2009, the question of the termination of his services by the respondent on 01.6.2009 (as alleged) does not arise.

22. That being so, I have no hesitation to conclude that none of the provisions of the Act has been flouted by the respondent. The petitioner is telling nothing else except a bundle of lies just to derive the undue advantage(s). He is not entitled to any relief.

23. These issues are decided against the petitioner and in favour of his adversary.

**ISSUES NO. 3 AND 4**

24. Taking into account my findings on the issues No.1 and 2 above, it is held that neither the petitioner has a cause of action nor the claim petition is maintainable in the present form.

25. These issues are also decided against the petitioner.

**ISSUE NO. 5**

26. Not pressed.

**ISSUE NO. 6**

27. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court *vide* judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

28. This issue is decided in favour of the petitioner and against the respondent.

**RELIEF (ISSUE NO. 7)**

29. As a sequel to my findings on the issues No.1 to 4, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 179/2012  
Date of Institution : 02.3.2012  
Date of Decision : 13.11.2013

Shri Govind Ram s/o Shri Sohan Singh, r/o Village and P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I.&P.H. Division, Padhar, Distt. Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Shri Govind Ram S/O Shri Sohan Singh, Village and P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during years 1998 to 2000 by the Executive Engineer, I.&P.H. Division, Padhar, District Mandi, H.P. without complying with the provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.04.1998. He worked under the Assistant Engineer, I&PH Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2000. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2001 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given

any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 01.06.1998 to 31.12.2000, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2006 and ten years of continuous service on 31.12.2008. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 01.06.1998 to 31.12.2000 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon'ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2009 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.04.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 07.10.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1998 to 2000. The

services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 8th September, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*

4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..*OPR.*

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

**REASONS FOR FINDINGS****ISSUE NO. 1**

8. The petitioner Shri Govind Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 8th September, 2010 issued by the I&PH Department, Govt. of Himachal Pradesh regarding regularization of daily waged/contingent paid workers.

14. Exts. P-1 to P-32 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays charts Exs. RW1/A and F, it can be gathered that the petitioner was initially appointed on 01.4.1998. These mandays charts are not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.



On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (3) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (4) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—
  - (b) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (v) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (vi) he has been on leave with full wages, earned in the previous years;

- (vii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (viii) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In Digwadih Colliery v. Workmen, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays charts Exs. RW1/A and F unfold that the services of the petitioner were initially engaged on 01.04.1998. From the date of his initial engagement to 31.12.2000, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is noxious to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working

days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

## **ISSUE NO. 2**

25. Taking into account my findings on issue No. 1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

## **ISSUE NO. 3**

27. Not pressed.

## **ISSUE NO. 4**

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 5)**

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 180/2012  
Date of Institution : 02.3.2012  
Date of Decision : 13.11.2013

Shri Chander Kant s/o Shri Santosh Kumar, r/o Village Salang, P.O. Tikroo, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division, Padhar, Distt. Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Shri Chander Kant S/O Shri Santosh Kumar, Village Salang, P.O. Tikroo, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during years 2000 to 2002 by the Executive Engineer, I.&P.H. Division, Padhar, District Mandi, H.P. without complying with the provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.04.2000. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his

favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2002. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2002 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 22.05.2000 to 31.12.2002, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2007 and ten years of continuous service on 31.12.2009. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2010 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 22.05.2000 to 31.12.2002 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (v) The Hon'ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2010 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2010 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (vi) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (vii) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.04.2000. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 17.2.2012. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 2000 to 2002. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 20th July, 2011 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2011 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 2000 to 2002 is illegal and unjustified as alleged? ..*OPP.*
2. Whether the petition is not maintainable in the present form? ..*OPR.*
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..*OPR.*
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	Yes
Issue No. 3	:	Not pressed
Issue No. 4	:	No
Relief.	:	Claim petition dismissed <i>vide</i> operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Chander Kant stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 20th July, 2011 issued by the Personnel Department, Govt. of Himachal Pradesh regarding regularization of daily waged/contingent paid workers.

14. Exts. P-1 to P-32 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays charts Exs. RW1/A and F, it can be gathered that the petitioner

was initially appointed on 01.4.2000. These mandays charts are not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,—

- (5) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (6) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (c) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case.



*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (ix) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (x) he has been on leave with full wages, earned in the previous years;
- (xi) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xii) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for days in a period of 12 calendar months to the employee/petitioner. In Digwadih Colliery v. Workmen, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays charts Exs. RW1/A and F unfold that the services of the petitioner were initially engaged on 01.4.2000. From the date of his initial engagement to 31.12.2002, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 2000 to 2002. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful

absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

## **ISSUE NO. 2**

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

## **ISSUE NO. 3**

27. Not pressed.

## **ISSUE NO. 4**

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

**RELIEF (ISSUE NO. 5)**

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 182/2012  
Date of Institution : 02.3.2012  
Date of Decision : 13.11.2013

Shri Prakash Chand s/o Shri Kunda Ram, r/o Village Salang, P.O. Tikroo, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I&PH Division, Padhar, Distt. Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Prakash Chand S/O Sh. Kunda Ram, Village Salang, P.O. Tikroo, Tehsil Joginder Nagar, Distt. Mandi,

H.P. from time to time during the years 2000 to 2002 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F, G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.08.1998. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2001. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2002 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 21.08.2000 to 31.12.2001, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2007 and ten years of continuous service on 31.12.2009. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2010 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 21.08.2000 to 31.12.2001 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (viii) The Hon’ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2010 in the pay scale of Rs.4900- 10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2010 to onwards along with 12% interest from the amount due to till the date of realization the amount.

- (ix) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (x) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.08.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 17.2.2012. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 2000 to 2002. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 20th July, 2011 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2011 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 2000 to 2002 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR*.
  4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..*OPR*.
  5. Relief.
  6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
  7. For the reasons detailed here under, my findings on the above issues are as follows:-
- Issue No. 1 : No
- Issue No. 2 : Yes
- Issue No. 3 : Not pressed
- Issue No. 4 : No
- Relief. : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Prakash Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive

Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 20th July, 2011 issued by the Personnel Department, Govt. of Himachal Pradesh regarding regularization of daily waged/contingent paid workers.

14. Exts. P-1 to P-27 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays charts Exs. RW1/A and F, it can be gathered that the petitioner was initially appointed on 01.8.2000. These mandays charts are not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (7) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (8) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (d) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

- (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case.

*Explanation.*-For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (xiii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (xiv) he has been on leave with full wages, earned in the previous years;
- (xv) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xvi) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In Digwadih Colliery v. Workmen, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays charts Exs. RW1/A and F unfold that the services of the petitioner were initially engaged on 01.8.2000. From that date to 31.12.2002, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the



days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 2000 to 2002. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

## **ISSUE NO. 2**

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

## **ISSUE NO. 3**

27. Not pressed.

## **ISSUE NO. 4**

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the

Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

### **RELIEF (ISSUE NO. 5)**

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 185/2012  
Date of Institution : 02.3.2012  
Date of Decision : 13.11.2013

Shri Partap Chand s/o Shri Moni Ram, Village-Kohara, P.O. Sainthal, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I&PH Division, Padhar, Distt. Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
 : Sh. Vijay Kaundal, Adv.  
 For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Shri Partap Chand S/O Sh. Moni Ram, Village-Kohara, P.O. Sainthal, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during the years 1998 to 2000 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, H.P. without complying with the provisions of section 25-F, G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.09.1998. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2000. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2001 onwards, he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 01.12.1998 to 31.12.2000, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner’s) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2006 and ten years of continuous service on 31.12.2008. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya’s case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 01.12.1998 to 31.12.2000 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (xi) The Hon’ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2009 in the pay scale of Rs.4900- 10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2010 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (xii) The Hon’ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (xiii) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.09.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 03.11.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya’s case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya’s case. The regularization policy dated 7th May, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2010 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2008. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..*OPP*.

2. Whether the petition is not maintainable in the present form? ..*OPR*.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR*.

4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..*OPR*.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Partap Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 7th May, 2010 issued by the Personnel Department, Govt. of Himachal Pradesh regarding regularization of daily waged/contingent paid workers.

14. Exts. P-1 to P-18 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays charts Exs. RW1/A and F, it can be gathered that the petitioner was initially appointed on 01.10.1998. These mandays charts are not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

(9) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on

account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(10) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(e) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

*Explanation.-* For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(xvii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xviii) he has been on leave with full wages, earned in the previous years;

(xix) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(xx) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is

to be deemed continuous service even if interrupted". The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays charts Exs. RW1/A and F unfold that the services of the petitioner were initially engaged on 01.10.1998. From that date to 31.12.2000, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

## **ISSUE NO. 2**

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.



**ISSUE NO. 3**

27. Not pressed.

**ISSUE NO. 4**

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

**RELIEF (ISSUE NO. 5)**

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 189/2012

Date of Institution : 02.3.2012

Date of Decision : 13.11.2013

Shri Krishan Singh s/o Shri Sanichru Ram, r/o Village Masoli, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I&PH Division, Padhar, Distt. Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Krishan Singh S/O Sh. Sanichru Ram, Village Masoli, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1997 to 1999 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F, G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.01.1997. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.1999. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2000 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 21.01.1997 to 31.12.1999, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner’s) services. The services of the persons

junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2004 and ten years of continuous service on 31.12.2006. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 21.01.1997 to 31.12.1999 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (xiv) The Hon’ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2007 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (xv) The Hon’ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (xvi) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.01.1997. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 09.3.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1997 to 1999. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the

employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 9th September, 2008 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2008 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2007. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1997 to 1999 is illegal and unjustified as alleged? .. *OPP.*

2. Whether the petition is not maintainable in the present form? .. *OPR.*

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? .. *OPR.*

4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? .. *OPR.*

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

**REASONS FOR FINDINGS****ISSUE NO. 1**

8. The petitioner Shri Krishan Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 9th September, 2008 issued by the Personnel Department, Govt. of Himachal Pradesh regarding regularization of daily waged/contingent paid workers.

14. Exts. P-1 to P-26 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A and F, it can be gathered that the petitioner was initially appointed on 21.12.1996. These mandays charts are not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of

continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,—

- (11) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (12) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—
  - (f) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

- (xxi) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

- (xxii) he has been on leave with full wages, earned in the previous years;
- (xxiii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xxiv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays charts Exs. RW1/A and F unfold that the services of the petitioner were initially engaged on 21.12.1996. From that date to 31.12.1999, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1997 to 1999. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee.

Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

## **ISSUE NO. 2**

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

## **ISSUE NO. 3**

27. Not pressed.

## **ISSUE NO. 4**

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 5)**

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.



33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 189/2012  
Date of Institution : 02.3.2012  
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Shri Krishan Singh s/o Shri Sanichru Ram, r/o Village Masoli, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I&PH Division, Padhar, Distt. Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Krishan Singh S/O Sh. Sanichru Ram, Village Masoli, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1997 to 1999 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F, G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.01.1997. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his

favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.1999. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2000 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 21.01.1997 to 31.12.1999, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2004 and ten years of continuous service on 31.12.2006. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 21.01.1997 to 31.12.1999 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (xvii) The Hon'ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2007 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (xviii) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (xix) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.01.1997. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 09.3.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1997 to 1999. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 9th September, 2008 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2008 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2007. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1997 to 1999 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*

4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..*OPR.*

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Claim petition dismissed *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Krishan Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 9th September, 2008 issued by the Personnel Department, Govt. of Himachal Pradesh regarding regularization of daily waged/contingent paid workers.

14. Exts. P-1 to P-26 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A and F, it can be gathered that the petitioner

was initially appointed on 21.12.1996. These mandays charts are not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,—

- (13) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (14) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (g) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (xxv) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (xxvi) he has been on leave with full wages, earned in the previous years;
- (xxvii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xxviii) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In Digwadih Colliery v. Workmen, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays charts Exs. RW1/A and F unfold that the services of the petitioner were initially engaged on 21.12.1996. From that date to 31.12.1999, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1997 to 1999. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from

duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

## **ISSUE NO. 2**

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

## **ISSUE NO. 3**

27. Not pressed.

## **ISSUE NO. 4**

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

**RELIEF (ISSUE NO. 5)**

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 21/2013

Date of Institution : 23.02.2013

Date of Decision : 14.11.2013

Shri Pawan Kumar s/o Shri Tara Chand, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat,  
District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Pawan Kumar, S/O Shri Tara Chand, R/O Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 8.7.2005 by The



Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wagger on the muster rolls by the respondent in the year 1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as a daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reengagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

"1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent w.e.f. 08.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.

2. The Hon'ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.

3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the

effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 02.7.2013, following issues were struck:-
  1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08-07-2005 is illegal and unjustified as alleged? ..*OPP.*
  2. Whether the petition is not maintainable in the present form? ..*OPR.*
  3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..*OPR.*
  4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*
  5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..*OPR.*
  6. Relief.
  6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
  7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 2 : Not pressed

Issue No. 3 : Not pressed

Issue No. 4 : No

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Pawan Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager, no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1999 and he worked as such continuously up-to

07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of reengaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

#### **ISSUES No. 2, 3 and 5**

18. Not pressed.

#### **ISSUE NO. 4**

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award

dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

21. This issue is also decided in favour of the petitioner and against the respondent.

### **RELIEF (ISSUE NO. 6)**

22. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 32/2013

Date of Institution : 05.04.2013

Date of Decision : 14.11.2013

Shri Misroo Ram s/o Shri Moda Ram, r/o Village Tatoli, P.O. Sidhpur, Sub Tehsil Dharampur, District Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Misroo Ram, S/O Shri Moda Ram, R/O Village Tatoli, P.O. Sidhpur, Sub Tehsil Dharampur, District Mandi, H.P. w.e.f. 8-7-2005 by The Executive Engineer, H.P.P.W.D. (B&R) Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 13.11.1998. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as a daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reengagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent w.e.f. 08.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.

2. The Hon’ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.

3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the month of November, 1998 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 02.7.2013, following issues were struck:-

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08-07-2005 is illegal and unjustified as alleged? ..OPP.

2. Whether the petition is not maintainable in the present form? ..*OPR.*
3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..*OPR.*
4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..*OPR.*
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : Not pressed

Issue No. 4 : No

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Misroo Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her



services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager, no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the month of November, 1998 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of reengaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the

Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

### **ISSUES No. 2, 3 and 5**

18. Not pressed.

### **ISSUE NO. 4**

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

21. This issue is also decided in favour of the petitioner and against the respondent.

### **RELIEF (ISSUE NO. 6)**

22. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 23/2013

Date of Institution : 23.02.2013

Date of Decision : 14.11.2013

Shri Vijay Kumar s/o Shri Ram Ditta, r/o Village Karyal, P.O. Sadhot, Tehsil Sarkaghat,  
Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Vijay Kumar S/O Shri Ram Ditta, R/O Village Karyal, P.O. Sadhot, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 8-7-2005 by The Executive Engineer, HPPWD Division, Dharampur, District mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 01.01.1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the

termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as a daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reengagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent w.e.f. 08.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.

2. The Hon'ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.

3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the month of January, 1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily

wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 02.7.2013, following issues were struck:-
  1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08-07-2005 is illegal and unjustified as alleged? ..*OPP.*
  2. Whether the petition is not maintainable in the present form? ..*OPR.*
  3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..*OPR.*
  4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*
  5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..*OPR.*
  6. Relief.
  6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
  7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : Not pressed

Issue No. 4 : No

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

## REASONS FOR FINDINGS

**ISSUE NO. 1**

8. The petitioner Shri Vijay Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wagger, no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wagger on the muster roll in the month of January, 1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart

Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of reengaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

#### **ISSUES No. 2, 3 and 5**

18. Not pressed.

#### **ISSUE NO. 4**

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

21. This issue is also decided in favour of the petitioner and against the respondent.

### **RELIEF (ISSUE NO. 6)**

22. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 22/2013

Date of Institution : 23.02.2013

Date of Decision : 14.11.2013

Shri Vivek Kumar s/o Shri Kali Dass, r/o Village Sanour, P.O. Sari, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P.

*..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.



For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Vivek Kumar, S/O Shri Kali Dass, R/O Village Sanour, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 8-7-2005 by the Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 01.12.1998. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as a daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reengagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent w.e.f. 08.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.

2. The Hon'ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.

3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the month of December, 1998 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 02.7.2013, following issues were struck:-

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08-07-2005 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : Not pressed

Issue No. 4 : No

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Vivek Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager, no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the month of December, 1998 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of reengaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

### **ISSUES No. 2, 3 and 5**

18. Not pressed.

**ISSUE NO. 4**

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

21. This issue is also decided in favour of the petitioner and against the respondent.

**RELIEF (ISSUE NO. 6)**

22. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF R GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 223/2012

Date of Institution : 01.05.2012

Date of Decision : 18.11.2013

Shri Jagdish Chand s/o Shri Guri Singh, r/o Village Galu, P.O.Dul, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

*Versus*

The Divisional Forest Officer, Forest Division, Joginder Nagar, Distt. Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Singh, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Jagdish Chand S/O Shri Guri Singh, R/O Village Galu, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during July, 2004 to December, 2010 and finally w.e.f. December, 2010 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged as a daily waged beldar by the respondent/department in the month of July, 1999. He worked as such up-to 21.12.2010 in Dundh, Kathala, Suhi and Joginder Nagar nurseries. Thereafter, his services were terminated by the respondent by a verbal order. Before the disengagement of his services, neither any notice was given to him nor the retrenchment compensation was paid. At the time of his termination, the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. Many new/fresh hands have been employed by the respondent after the termination of his (petitioner’s) services. He was not given an opportunity of re-employment. During the pendency of the proceedings, he has been taken back in service by the respondent. Fictional breaks in service were provided to him by the respondent up-to the month of December, 2010. The persons junior to him were retained in continuous service by the respondent which amounts to unfair labour practice. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the petition may kindly be allowed and respondent may kindly be directed not to give fictional breaks to the petitioner and the respondent be directed to give seniority, continuity in service, back wages and compensation with all consequential benefits in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. The petitioner has no cause of action. The petition is bad on account of delay and laches on the part of the claimant/petitioner. The claim of the petitioner has become in-fructuous as he served up-to the month of 08/2012 i.e. after the date/month of alleged final termination (December, 2010).

On merits, it has been denied that the services of the petitioner were engaged as a daily waged beldar in the month of July, 1999. Actually, the petitioner was employed as a casual labourer in the month of January, 2000 for carrying out the seasonal forestry works keeping in view the availability of the works and the funds. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the availability of the work for the whole month, he used to absent from his duties. Neither any artificial/fictional breaks in service were provided to the petitioner at any point of time nor his services were disengaged on 21.12.2010 as alleged. Casual labourers are engaged for undertaking the seasonal forestry works as per their seniority subject to the availability of the works and the funds. Similarly situated workmen are also being employed for carrying out the seasonal forestry works. The petitioner did not complete 240 days of work in any calendar year of his engagement. He worked for 30 days in the month of December, 2010. Therefore, the question of the disengagement of his services in the month of December, 2010 does not arise. Forestry works are seasonal in nature. No person junior to the petitioner has been engaged continuously or retained in service. As per the provisions of the Act, there is an embargo of eight kilometers for the engagement of the daily wagers. The territorial jurisdiction of his (respondent's) office is much beyond eight kilometers. No new/fresh hands have been appointed. He (respondent) did not indulge in any unfair labour practice. The principle of 'last come first go' was strictly followed. No provision of the Act has been flouted.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that his services were disengaged on 21.12.2010 by an oral order. False record/mandays chart has been prepared and annexed to the reply by the respondent to defeat his (petitioner's) claim.

5. Per order dated 08.01.2013, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent from time to time during July, 2004 to December, 2010 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the final termination of services of the petitioner by the respondent w.e.f. December, 2010 is illegal and unjustified as alleged? ..OPP.
3. Whether the petitioner has a cause of action? ..OPP.
4. Whether the claim petition is not maintainable in the present form? ..OPR.

5. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect?  
..OPR.

6. Relief.

6. At this stage, I will like to highlight that on 24th September, 2013, Id. counsel for the petitioner/claimant made a statement at bar that since the services of his client have already been re-engaged by the respondent/department, he does not press issue No.2 regarding the final termination of the services of his client (petitioner) by the respondent with effect from the month of December, 2010.

7. I have heard the Id. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : Yes

Issue No. 4 : Not pressed.

Issue No. 5 : No

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

9. Shri Jagdish Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work in the forest department is seasonal. He also denied that at the time of his engagement, it was conveyed to him that the work for the entire month cannot be provided to him as well as the same will be given to him subject to the availability of the budget. He denied that he used to remain absent from his duties and has instituted a phoney petition.

10. Conversely, Shri P.L. Gupta, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that intentional breaks in service were provided to the petitioner time and again so that he does not complete 240 days of work. He also denied that the work is available for the whole year in the forest department.

11. Exts. PW1/B1 to B6 are the copies of the bills evidencing that the petitioner had served the respondent/department in the years 2006 and 2008 on bill basis.

12. Exts. PW1/C1 to C4 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.



13. Ex. PA is the divisional level seniority list of casual labour/daily wagers of Joginder Nagar Forest Division as it stood on 31.10.2012.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Exts. RW1/C and D are the copies of the notices which were given to the petitioner by the Range Forest Officer, Joginder Nagar for doing the plantation work etc.

16. Ex. RW1/E is the copy of the report of the field staff. It depicts that the petitioner had joined his duties on 01.8.2012 after the receipt of the notice Ex. RW1/D.

17. Ex. RW1/F is the copy of a bill. It reveals that the petitioner worked under the respondent on bill basis.

18. It is the admitted case of the parties that after December, 2010, the petitioner is serving the respondent/department. As already mentioned, there is no controversy between the parties regarding the alleged final termination of the services of the petitioner by the respondent in the month of December, 2010. The only dispute which remains between the parties and requires thrashing at the hands of this Court is as to whether artificial/fictional breaks in service were provided to the petitioner by the respondent from the year 2004 to December, 2010 or not?

19. The respondent has not placed/exhibited on the record any document evidencing that at the time of his initial appointment the services of the petitioner were engaged as a casual labourer for carrying out the seasonal forestry works to his knowledge. The petitioner has failed to lead any cogent and convincing evidence to show that the mandays chart Ex. RW1/B produced by the respondent is incorrect. Its perusal discloses that in some years the petitioner worked for almost 200 days with the respondent/department. A person working for such a long period in a calendar year cannot be termed as a seasonal/casual worker by any stretch of imagination.

20. Now, I proceed to decide as to whether intentional breaks in service were provided to the petitioner by the respondent or not?

21. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

(15) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(16) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(h) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

- (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (xxix) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (xxx) he has been on leave with full wages, earned in the previous years;
- (xxxii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xxxii) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

22. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

23. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

24. At the cost of reiteration, I will like to add that the petitioner has failed to adduce any evidence to establish that the mandays chart Ex.RW1/B is wrong. Browsing of the mandays chart Ex. RW1/B reveals that from January, 2000 to December, 2010, the work for all the months was not made available to the petitioner by the respondent. Sometimes, he was provided the work for less than 15 days in a month by the respondent/department. It has already been held by me that the petitioner was not a casual/seasonal worker. Not providing the work for 240 days in a calendar year due to no fault of the workman is nothing but unfair labour practice. The mandays chart Ex. RW1/B makes it clear that the work for 240 days or more was not made available to the petitioner

by the respondent. That being so, it can be safely said that artificial/fictional breaks in service, were provided to the petitioner by the respondent. The break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Act.

25. This issue is decided in favour of the petitioner and against the respondent.

#### **ISSUES NO. 2 AND 4**

26. Not pressed.

#### **ISSUE NO. 3**

27. Keeping in mind my findings on issue No.1 above, it is held that the petitioner has a cause of action.

28. This issue is also decided in his (petitioner's) favour.

#### **ISSUE NO. 5**

29. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

30. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for the break period.

31. This issue too is decided in favour of the petitioner and against the respondent.

#### **RELIEF (ISSUE NO. 6)**

32. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. Breaks in service given to the petitioner by the respondent from the month of July, 2004 to December, 2010 are held to be wrong and illegal. The break period is ordered to be counted for the purpose of continuous service as well as the seniority of the petitioner except back wages. Parties to bear their own costs.

33. The reference is answered in the aforesaid terms.
34. A copy of this Award be sent to the appropriate Government for publication in the official gazette.
35. File after due completion be consigned to the Record Room.
- Announced in the open Court today this 18th day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 224/2012  
Date of Institution : 01.05.2012  
Date of Decision : 18.11.2013

Shri Subhakaran s/o Shri Sarvdyal, r/o Village Dundh, P.O. Dul, Tehsil Joginder Nagar,  
District Mandi, H.P. *..Petitioner.*

*Versus*

The Divisional Forest Officer, Forest Division, Joginder Nagar, Distt. Mandi, H.P.  
*..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Singh, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Subhakaran S/O Shri Sarvdyal R/O Village Dundh, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during Year, 2005 to December, 2010 and finally w.e.f. December, 2010 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged as a daily waged beldar by the respondent/department in the month of July, 1997. He worked as such up-to 21.12.2010 in Dundh, Kathala and Joginder Nagar nurseries. Thereafter, his services were terminated by the respondent by a verbal order. Before the disengagement of his services, neither any notice was given to him nor the retrenchment compensation was paid. At the time of his termination, the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. Many new/fresh hands have been employed by the respondent after the termination of his (petitioner's) services. He was not given an opportunity of re-employment. During the pendency of the proceedings, he has been taken back in service by the respondent. Fictional breaks in service were provided to him by the respondent up-to the month of December, 2010. The persons junior to him were retained in continuous service by the respondent which amounts to unfair labour practice. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the petition may kindly be allowed and respondent may kindly be directed not to give fictional breaks to the petitioner and the respondent be directed to give seniority, continuity in service, back wages and compensation with all consequential benefits in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. The petitioner has no cause of action. The petition is bad on account of delay and laches on the part of the claimant/petitioner. The claim of the petitioner has become in-fructuous as he served up-to the month of 08/2012 i.e. after the date/month of alleged final termination (December, 2010).

On merits, it has been denied that the services of the petitioner were engaged as a daily waged beldar in the month of July, 1997. Actually, the petitioner was employed as a casual labourer in the month of January, 2000 for carrying out the seasonal forestry works keeping in view the availability of the works and the funds. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the availability of the work for the whole month, he used to absent from his duties. Neither any artificial/fictional breaks in service were provided to the petitioner at any point of time nor his services were disengaged on 21.12.2010 as alleged. Presently, the petitioner is serving as a daily wager in Dundh nursery on the basis of his seniority as a casual labourer. Casual labourers are engaged for undertaking the seasonal forestry works as per their seniority subject to the availability of the works and the funds. Similarly situated workmen are also being employed for carrying out the seasonal forestry works. The petitioner did not complete 240 days of work in any calendar year of his engagement. He worked for 30 days in the month of December, 2010. Therefore, the question of the disengagement of his services in the month of December, 2010 does not arise. Forestry works are seasonal in nature. No person junior to the petitioner has been engaged continuously or retained in service. As per the provisions of the Act, there is an embargo of eight kilometers for the engagement of the daily wagers. The territorial jurisdiction of his (respondent's) office is much beyond eight kilometers. No new/fresh hands have been appointed. He (respondent) did not indulge in any unfair labour practice. The principle of 'last come first go' was strictly followed. No provision of the Act has been flouted.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that his services were disengaged on 21.12.2010 by an oral order. False record/mandays chart has been prepared and annexed to the reply by the respondent to defeat his (petitioner's) claim.

5. Per order dated 08.01.2013, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent from time to time during the year, 2005 to December, 2010 is/was illegal and unjustified as alleged? ..*OPP.*
2. Whether the final termination of services of the petitioner by the respondent w.e.f. December, 2010 is illegal and unjustified as alleged? ..*OPP.*
3. Whether the petitioner has a cause of action? ..*OPP.*
4. Whether the claim petition is not maintainable in the present form? ..*OPR.*
5. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. At this stage, I will like to highlight that on 24th September, 2013, Id. counsel for the petitioner/claimant made a statement at bar that since the services of his client have already been re-engaged by the respondent/department, he does not press issue No.2 regarding the final termination of the services of his client (petitioner) by the respondent with effect from the month of December, 2010.

7. I have heard the Id. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Partly Yes, Partly No

Issue No. 2 : Not pressed

Issue No. 3 : Yes

Issue No. 4 : Not pressed

Issue No. 5 : No

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

9. Shri Subhkaran (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work in the forest department is seasonal. He also denied that at the time of his engagement, it was conveyed to him that the work for the entire month cannot be provided to him as well as the same will be given to him subject to the availability of the budget. He denied that he used to remain absent from his duties and has instituted a phoney petition.

10. Conversely, Shri P.L. Gupta, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that intentional breaks in service were provided to the petitioner time and again so that he does not complete 240 days of work. He also denied that the work is available for the whole year in the forest department.

11. Exts. PW1/B1 to B3 are the copies of the bills evidencing that the petitioner had served the respondent/department in the year 2006 on bill basis.

12. Ex. PA is the divisional level seniority list of casual labour/daily wagers of Joginder Nagar Forest Division as it stood on 31.10.2012.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Exts. RW1/C and D are the copies of the notices which were given to the petitioner by the Range Forest Officer, Joginder Nagar for doing the plantation work etc.

15. Ex. RW1/E is the copy of the report of the field staff. It depicts that the petitioner had joined his duties on 01.8.2012 after the receipt of the notice Ex. RW1/D.

16. Ex. RW1/F is the copy of a bill. It reveals that Shri Prem Singh worked under the respondent on contract/bill basis.

17. It is the admitted case of the parties that after December, 2010, the petitioner is serving the respondent/department. As already mentioned, there is no controversy between the parties regarding the alleged final termination of the services of the petitioner by the respondent in the month of December, 2010. The only dispute which remains between the parties and requires thrashing at the hands of this Court is as to whether artificial/fictional breaks in service were provided to the petitioner by the respondent from the year 2005 to December, 2010 or not?

18. The respondent has not placed/exhibited on the record any document evidencing that at the time of his initial appointment the services of the petitioner were engaged as a casual labourer for carrying out the seasonal forestry works to his knowledge. The petitioner has failed to lead any cogent and convincing evidence to show that the mandays chart Ex. RW1/B produced by the respondent is incorrect. Its perusal discloses that in the year 2005 i.e. from February, 2005 to December, 2005, work for 260 days was provided to the petitioner by the respondent. A person who is given the work for more than 240 days in a calendar year cannot be termed as a seasonal/casual worker by any stretch of imagination.

19. Now, I proceed to decide as to whether intentional breaks in service were provided to the petitioner by the respondent or not?

20. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

(17) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(18) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(i) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(xxxiii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xxxiv) he has been on leave with full wages, earned in the previous years;

(xxxv) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and



(xxxvi) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

21. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

22. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

23. At the cost of reiteration, I will like to add that the petitioner has failed to adduce any evidence to establish that the mandays chart Ex.RW1/B is wrong. Browsing of the mandays chart clarifies that in the year 2005, work for more than 240 days in a calendar year was provided to the petitioner by the respondent. However, he worked for less than 240 days and remained absent from duty for the rest of the days. Therefore, it cannot be said that fictional break in service was provided to the petitioner by the respondent in the year 2005.

24. So far as the period from February, 2006 to December, 2010 is concerned, I will like to say that the mandays chart Ex. RW1/B goes to show that the work for all the months was not made available to the petitioner by the respondent. It has already been held by me that the petitioner was not a casual/seasonal worker. Not providing the work for 240 days due to no fault of the workman is nothing but unfair labour practice. The mandays chart Ex. RW1/B makes it clear that the work for 240 days or more in a calendar year was not made available to the petitioner by the respondent. That being so, it can be safely said that artificial/fictional breaks in service, were provided to the petitioner by the respondent from the month of February, 2006 to December, 2010. The break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Act.

25. This issue is partly decided in favour of the petitioner and against the respondent.

## **ISSUES NO. 2 AND 4**

26. Not pressed.

## **ISSUE NO. 3**

27. Keeping in mind my findings on issue No.1 above, it is held that the petitioner has a cause of action.

28. This issue is also decided in his (petitioner's) favour.

## **ISSUE NO. 5**

29. Reference No. 41/2001 (RBT No.403/04) titled as *Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla* and two others was disposed of by this

Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

30. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for the break period.

31. This issue too is decided in favour of the petitioner and against the respondent.

#### **RELIEF (ISSUE NO. 6)**

32. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. Breaks in service given to the petitioner by the respondent from the month of February, 2006 to December, 2010 are held to be wrong and illegal. The break period is ordered to be counted for the purpose of continuous service as well as the seniority of the petitioner except back wages. Parties to bear their own costs.

33. The reference is answered in the aforesaid terms.

34. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

35. File after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Date of Institution : 01.05.2012

Date of Decision : 18.11.2013

Shri Gulab Singh s/o Shri Prem Singh, r/o Village Suhi, P.O. Dul, Tehsil Joginder Nagar,  
District Mandi, H.P. ..Petitioner.

*Versus*

The Divisional Forest Officer, Forest Division, Joginder Nagar, Distt. Mandi, H.P.  
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Singh, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Gulab Singh S/O Shri Prem Singh, R/O Village Suhi, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during June, 1999 to December, 2010 and finally w.e.f. December, 2010 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged as a daily waged beldar by the respondent/department in the month of July, 1997. He worked as such up-to 21.12.2010 in Suhi, Kathala and Joginder Nagar nurseries. Thereafter, his services were terminated by the respondent by a verbal order. Before the disengagement of his services, neither any notice was given to him nor the retrenchment compensation was paid. At the time of his termination, the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. Many new/fresh hands have been employed by the respondent after the termination of his (petitioner’s) services. He was not given an opportunity of re-employment. During the pendency of the proceedings, he has been taken back in service by the respondent. Fictional breaks in service were provided to him by the respondent up-to the month of December, 2010. The persons junior to him were retained in continuous service by the respondent which amounts to unfair labour practice. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the petition may kindly be allowed and respondent may kindly be directed not to give fictional breaks to the petitioner and the respondent be directed to give seniority, continuity

in service, back wages and compensation with all consequential benefits in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. The petitioner has no cause of action. The petition is bad on account of delay and laches on the part of the claimant/petitioner. The claim of the petitioner has become in-fructuous as he served up-to the month of 08/2012 i.e. after the date/month of alleged final termination (December, 2010).

On merits, it has been denied that the services of the petitioner were engaged as a daily waged beldar in the month of July, 1997. Actually, the petitioner was employed as a casual labourer in the month of June, 2000 for carrying out the seasonal forestry works keeping in view the availability of the works and the funds. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the availability of the work for the whole month, he used to absent from his duties. Neither any artificial/fictional breaks in service were provided to the petitioner at any point of time nor his services were disengaged on 21.12.2010 as alleged. Casual labourers are engaged for undertaking the seasonal forestry works as per their seniority subject to the availability of the works and the funds. Similarly situated workmen are also being employed for carrying out the seasonal forestry works. The petitioner did not complete 240 days of work in any calendar year of his engagement. He worked for 29 days in the month of December, 2010. Therefore, the question of the disengagement of his services in the month of December, 2010 does not arise. Forestry works are seasonal in nature. No person junior to the petitioner has been engaged continuously or retained in service. As per the provisions of the Act, there is an embargo of eight kilometers for the engagement of the daily wagers. The territorial jurisdiction of his (respondent's) office is much beyond eight kilometers. No new/fresh hands have been appointed. He (respondent) did not indulge in any unfair labour practice. The principle of 'last come first go' was strictly followed. No provision of the Act has been flouted.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that his services were disengaged on 21.12.2010 by an oral order. False record/mandays chart has been prepared and annexed to the reply by the respondent to defeat his (petitioner's) claim.

5. Per order dated 08.01.2013, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent from time to time during June, 1999 to December, 2010 is/was illegal and unjustified as alleged? ..*OPP.*
2. Whether the final termination of services of the petitioner by the respondent w.e.f. December, 2010 is illegal and unjustified as alleged? ..*OPP.*
3. Whether the petitioner has a cause of action? ..*OPP.*
4. Whether the claim petition is not maintainable in the present form? ..*OPR.*
5. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

## 6. Relief.

6. At this stage, I will like to highlight that on 24th September, 2013, ld. counsel for the petitioner/claimant made a statement at bar that since the services of his client have already been re-engaged by the respondent/department, he does not press issue No.2 regarding the final termination of the services of his client (petitioner) by the respondent with effect from the month of December, 2010.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Partly Yes, Partly No

Issue No. 2 : Not pressed

Issue No. 3 : Yes

Issue No. 4 : Not pressed

Issue No. 5 : No

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

9. Shri Gulab Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work in the forest department is seasonal. He also denied that at the time of his engagement, it was conveyed to him that the work for the entire month cannot be provided to him as well as the same will be given to him subject to the availability of the budget. He denied that he used to remain absent from his duties and has instituted a phoney petition.

10. Conversely, Shri P.L. Gupta, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that intentional breaks in service were provided to the petitioner time and again so that he does not complete 240 days of work. He also denied that the work is available for the whole year in the forest department.

11. Exts. PW1/B1 to B8 are the copies of the bills evidencing that the petitioner had served the respondent/department in the years 2005 and 2006 on bill basis.

12. Ex. PA is the divisional level seniority list of casual labour/daily wagers of Joginder Nagar Forest Division as it stood on 31.10.2012.

13. Ex. RW1/B is the mandays chart relating to the petitioner.
14. Exts. RW1/C and D are the copies of the notices which were given to the petitioner by the Range Forest Officer, Joginder Nagar for doing the plantation work etc.
15. Ex. RW1/E is the copy of the report of the field staff. It depicts that the petitioner had joined his duties on 01.8.2012 after the receipt of the notice Ex. RW1/D.
16. Ex. RW1/F is the copy of a bill. It reveals that the petitioner worked under the respondent on bill basis.
17. It is the admitted case of the parties that after December, 2010, the petitioner is serving the respondent/department. As already mentioned, there is no controversy between the parties regarding the alleged final termination of the services of the petitioner by the respondent in the month of December, 2010. The only dispute which remains between the parties and requires thrashing at the hands of this Court is as to whether artificial/fictional breaks in service were provided to the petitioner by the respondent from the year 1999 to December, 2010 or not?
18. The respondent has not placed/exhibited on the record any document evidencing that at the time of his initial appointment the services of the petitioner were engaged as a casual labourer for carrying out the seasonal forestry works to his knowledge. The petitioner has failed to lead any cogent and convincing evidence to show that the mandays chart Ex. RW1/B produced by the respondent is incorrect. Its perusal discloses that in some years the petitioner worked for almost 200 days with the respondent/department. A person working for such a long period in a calendar year cannot be termed as a seasonal/casual worker by any stretch of imagination.
19. Now, I proceed to decide as to whether intentional breaks in service were provided to the petitioner by the respondent or not?
20. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

  - (19) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
  - (20) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (j) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;

- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) ninety-five days, in the case of a workman employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (xxxvii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (xxxviii) he has been on leave with full wages, earned in the previous years;
- (xxxix) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xl) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

21. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In Digwadih Colliery v. Workmen, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

22. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

23. At the cost of reiteration, I will like to add that the petitioner has failed to adduce any evidence to establish that the mandays chart Ex.RW1/B is wrong. Browsing of the mandays chart Ex. RW1/B reveals that from June, 1999 to December, 2010, the work for all the months was not made available to the petitioner by the respondent. Sometimes, he was provided the work for less than 15 days in a month by the respondent/department. It has already been held by me that the petitioner was not a casual/seasonal worker. Not providing the work for 240 days in a calendar year due to no fault of the workman is nothing but unfair labour practice. The mandays chart Ex. RW1/B makes it clear that the work for 240 days or more in a calendar year was not made available to the petitioner by the respondent. That being so, it can be safely said that artificial/fictional breaks in service, were provided to the petitioner by the respondent. The break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Act.

24. This issue is partly decided in favour of the petitioner and against the respondent.

#### **ISSUES NO. 2 AND 4**

25. Not pressed.

#### **ISSUE NO. 3**

26. Keeping in mind my findings on issue No.1 above, it is held that the petitioner has a cause of action.

27. This issue is also decided in his (petitioner's) favour.

#### **ISSUE NO. 5**

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. While testifying in the Court as PW1, the petitioner has given his age as 49 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for the break period.

30. This issue too is decided in favour of the petitioner and against the respondent.

#### **RELIEF (ISSUE NO. 6)**

31. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. Breaks in service given to the petitioner by the respondent from the month of June, 1999 to December, 2010 are held to be wrong and illegal. The break period is ordered to be counted for the purpose of continuous service as well as the seniority of the petitioner except back wages. Parties to bear their own costs.

32. The reference is answered in the aforesaid terms.

33. A copy of this Award be sent to the appropriate Government for publication in the official gazette.



34. File after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 120/2007

Date of Institution : 25.09.2007

Date of Decision : 19.11.2013

Smt. Anita Kumari w/o Shri Ram Singh, r/o Village Kulihal, Post Office Mindal, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

*Versus*

Executive Engineer, Electrical Division, H.P.S.E.B., Killar, Tehsil Pangi, District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

: Sh. T.R. Bhardwaj, AR

For the Respondent : Sh. B.K. Sood, Adv.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Smt. Anita Kumari W/O Shri Ram Singh Workman by the Executive Engineer, H.P.S.E.B. Division, Killar, Tehsil-Pangi, District Chamba, H.P. w.e.f. February, 2002 without complying the provisions of the Industrial Disputes Act, 1947, whereas junior to her are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily waged beldar on muster roll basis by the respondent in the month of November, 1995. She continuously worked as such up-to the month of January, 2002 as well as

completed more than 160 days of work (Pangi is tribal area) in each and every calendar year of her engagement. In the month of February, 2002, her services were terminated by the respondent by a verbal order without assigning any reason. She has spot-less service record and was never charge-sheeted for the misconduct, if any. Before the termination of her services, neither any notice was given to her nor the wages in lieu of the notice period and the retrenchment compensation were paid. No approval of the Government was taken by the respondent/Board before the disengagement of her services. She never remained close from work. She could not discharge her duties only during the period the muster roll was not issued in her name by the respondent. She is/was not a defaulter. During the period of her employment, the respondent used to give her the fictional breaks so that she does not complete 160 days of work. Artificial breaks in service were given by the respondent so as to favour the junior workmen favorite to him (respondent). The break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). Before the termination of her services the overall seniority list of all the daily waged workmen serving under the respondent has not been circulated or got noted down from the concerned workmen. The persons junior to her were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. The persons junior to her namely S/Shri Karam Lal and Santosh etc. are still serving the respondent/Board. Their services have also been regularized. Not only this, new/fresh hands have been engaged by the respondent after the retrenchment of her services. She was not given an opportunity of reemployment. She approached the respondent time and again to re-engage her services, but in vain. If her services would not have been terminated illegally she would have completed eight years of continuous service on 31.10.2003 and would have become entitled for the regularization of her services w.e.f. 01.11.2003 under the eight years regularization policy of the Government. She has been put to heavy financial loss by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The respondent indulged in unfair labour practice. From the date of her termination, she is not gainfully employed.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(a) The oral orders of termination of my services passed by the respondent w.e.f. February, 2002 be set-aside being illegal, arbitrary and un-justified.
- (b) To direct the respondent to re-instate the services of petitioner w.e.f. February, 2002 with full back wages, seniority including continuity of services as the petitioner remained unemployed since the date of illegal termination of services.
- (c) To direct the respondent to count the period of intermittent breaks given in service to the applicant between the period Jan., 1996 to Jan., 2002 from time to time be counted towards the calculation of continuous service of 160 days in each year (as laid down for the tribal area of Pangi) under section 25B of ID Act and regularize the services of the petitioner as Beldar w.e.f. 01/11/2003 along with all consequential benefits.
- (d) To direct the respondent for the production of original record pertaining to the case of petitioner.
- (e) To direct the respondent to re-engage petitioner on Muster Roll basis pending final decision of the case.
- (f) Any other relief as the Hon'ble court may deem fit”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petitioner has no cause of action and locus standi to sue. The claim petition is not

maintainable. The same is time barred. The petitioner is estopped from filing the petition by her act and conduct.

On merits, it has been denied that the services of the petitioner were engaged as a daily wager in the month of November, 1995. Actually, the petitioner was initially deployed on 01.12.1995. She worked up-to 20.1.1996 against muster rolls No. 456 and 462 under him (respondent). After that, the petitioner started working through the contractor Shri Baldev Ram. The contention of the petitioner that she served for more than 160 days in each and every calendar year is totally wrong. In the month of January, 1996, the petitioner left the job willingly as she started working under the contractor. The petitioner has suppressed the material facts from the Court. She has not approached the Court with clean hands. S/Shri Karam Lal and Santosh Kumar never left the job. The petitioner cannot claim parity with them. Since the petitioner is not on his (respondent's) rolls after 20.1.1996, she has nothing to do with the deployment of the other workmen by him. No provision of the Act has been flouted. As the petitioner left the job voluntarily and started working under a contractor, she is not eligible for the regularization of her services. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 05.7.2013, following issues were struck:-

1. Whether the termination of the services of the petitioner by the respondent in the month of Feb. 2002 is illegal and unjustified as alleged? ..*OPP.*
2. Whether the petitioner has the locus standi to sue. If so, its effect? ..*OPP.*
3. Whether the petitioner has a cause of action? ..*OPP.*
4. Whether the petitioner is estopped from filing the claim petition by her act and conduct? ..*OPR.*
5. Whether the petition is time barred. If so, its effect? ..*OPR.*
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : No

Relief. : Claim petition dismissed *vide* operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

8. Smt. Anita Kumari (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that her services were not engaged by the respondent in the month of November, 1995. She cannot tell the number of days she worked in the month of November, 1995 and the amount of wages paid to her for the said month. She cannot produce any record to show that she was initially appointed in the month of November, 1995. She denied that her services were engaged on 01.12.1995 against muster roll No. 456 which was for 20 days and she worked only up-to 20.12.1995. She admitted that she was re-employed on 21.12.1995 against muster roll No. 462 which was up-to 20.1.1996. She admitted that she worked for only 16 days and absented from her duties voluntarily on 06.1.1996. She denied that she did not serve the respondent after 05.1.1996. Self stated, she worked up-to the year 2002. She admitted that S/Shri Karam Lal and Santosh Kumar served the respondent/Board regularly. Volunteered, she is senior to them. She denied that she did not complete 160 days of work in any calendar year of her employment and after abandoning the job, she started working under the contractor Shri Baldev Ram. She also denied that to gain the employment and other undue benefits, she has instituted a phoney petition.

9. Conversely, Shri K.S. Naryal, Senior Executive Engineer, HPSEB, Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were terminated in an unlawful manner. When the petitioner left the job, no notice was served upon her asking her to resume the duties. Even no departmental proceedings were initiated against the petitioner.

10. Ex. RW1/B is the copy of muster roll No. 456 from 01.12.1995 to 20.12.1995. It depicts that the petitioner served the respondent for all the 20 days and was paid the wages for the same.

11. Ex. RW1/C is the copy of muster roll No. 462 for the period 21.12.1995 to 20.1.1996. It unfolds that the petitioner worked up-to 05.1.1996 only and thereafter absented from her duties. The payment for 16 working days was made to the petitioner. Such payment was accepted by her without any protest.

12. Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding providing the artificial breaks in service to the petitioner by the respondent as alleged. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

13. Now comes the all important question as to whether the services of the petitioner were finally terminated by the respondent wrongly and illegally in the month of February, 2002 or not?

14. Since the petitioner has knocked the doors of this Court for the grant of various reliefs, a duty is cast upon her to prove her case.

No document has been placed/exhibited on the file by the petitioner evidencing that her services were initially engaged as a daily waged beldar on muster roll basis by the respondent in the month of November, 1995 and she continuously worked as such up-to the month of January, 2002. Rather, Exts. RW1/B and C viz. copies of the muster rolls make it abundantly clear that the petitioner was employed by the respondent on 01.12.1995 and she worked only up-to 05.1.1996. The petitioner (PW1) in her cross-examination admitted that her services were re-engaged on 21.12.1995 against muster roll No. 462. Ex. RW1/C is the copy of the said muster roll for the period 21.12.1995 to 20.1.1996. The petitioner (PW1) admitted that the muster roll was for a period of one month and she worked for only 16 days. Further, she (PW1) admitted that on 06.1.1996 she voluntarily absented from her duties. Self stated, her child was sick and she left the job after informing the JE.

15. The admissions made by the petitioner (PW1) coupled with the documentary evidence placed on the record make it crystal clear that the petitioner served the respondent/Board from 01.12.1995 to 05.1.1996 only despite the fact that the muster roll up-to 20.1.1996 (Ex. RW1/C) was issued in her favour by the respondent. Since the petitioner served up-to 05.1.1996 and thereafter absented from her duties, the question of termination of her services by the respondent in the month of February, 2002 does not arise.

16. It appears to me that the avarice of the petitioner to grab the Government job and money has forced her to prefer a totally false and baseless claim. She is not entitled to any relief. No provision of the Act has been infringed by the respondent.

17. This issue is decided against the petitioner and in favour of the respondent.

### **ISSUES NO. 2 AND 3**

18. Keeping in view my findings on issue No.1 above, it is held that the petitioner has no cause of action. She has no locus standi to sue.

19. These issues are also decided against her (petitioner).

### **ISSUE NO. 4**

20. Not pressed.

### **ISSUE NO. 5**

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been

expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. This issue is decided in favour of the petitioner and against the respondent.

**RELIEF (ISSUE NO. 6)**

23. As a sequel to my findings on the issues No.1 to 3 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 315/2012

Date of Institution : 28.08.2012

Date of Decision : 28.11.2013

Shri Ghanshyam s/o Shri Babu Ram, r/o Village Palyuni, P.O. Behli, Sub Tehsil Nihri,  
District Mandi, H.P. *..Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.  
*..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Ghanshyam S/O Shri Babu Ram, R/O Village Palyuni, P.O. Behli, Sub Tehsil Nihri, District Mandi, H.P. from time to time during July, 2000 to June, 2010 and finally terminated during July, 2010 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged labourer by the respondent on 1st July, 2000 in Behli Beat of Kangoo Forest Range. He worked as such up-to the month of June/July, 2010. During the period of his employment the respondent used to give him the fictional breaks time and again so that he does not complete 240 days of work. In many calendar years he served for more than 240 days. However, his working days/mandays have been wrongly shown by the respondent on the lesser side which amounts to unfair labour practice. In the last days of July, 2010, his services were finally terminated by the respondent without assigning any reason and issuing the notice. He was not informed about the misconduct, if any. In the seniority list issued by the respondent on 31.3.2003, the names of 386 daily wagers have been mentioned. His name figures at serial No. 378 of the seniority list. In accordance with the seniority list, eight persons junior to him are still serving the respondent/department. Moreover, he has been assigned the seniority from the month of March, 2002 in the seniority list instead of the month of July, 2000. His seniority has been disturbed and ignored. At the time of the termination of his services the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. Not only this, the persons junior to him have been employed/re-employed by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). From the date of his termination, he is unemployed.

As such, he (petitioner) prays that the intentional breaks in service given to him by the respondent from July, 2000 to June, 2010 as well as final termination of his services ordered by the respondent in the month of July, 2010 be upset. The break period be counted for the purpose of continuous service/regularization. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition/reference is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. The claim petition/reference regarding the final termination of the services of the petitioner in the month of July, 2010 is premature and has become in-fructuous. The petitioner worked with him (respondent) up-to the month of July, 2011. His mandays chart is annexure R1.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged labourer in the month of July, 2000. However, it has been pleaded that the petitioner was employed for carrying out the seasonal forestry works. He (petitioner) was an intermittent worker. Neither any artificial breaks in service were given to him at any point of time nor his services were

terminated in the month of July, 2010 as alleged. The petitioner used to work as per his convenience and finally abandoned the job voluntarily after the month of July, 2011. It stands admitted that the name of the petitioner figures at serial No.378 of the Suket Forest Divisional level seniority list. As and when the petitioner reported for duty, his services were engaged subject to the availability of the work and the funds. The principle of 'last come first go' was strictly followed. No person junior to the petitioner has been retained in service or engaged/re-engaged. The petitioner is gainfully employed as an agriculturist after abandoning the job. Since the petitioner willingly left the services, he is not entitled to any protection under the Act. No provision of the Act has been flouted. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the persons junior to him were provided continuous work by the respondent. He has been discriminated. He never absented from his duties.

5. Per order dated 25.02.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent from time to time during July, 2000 to June, 2010 is illegal and unjustified as alleged? ..*OPP.*
2. Whether the final termination of the services of the petitioner by the respondent during the month of July, 2010 is illegal and unjustified as alleged? ..*OPP.*
3. Whether the petition is not maintainable in the present form? ..*OPR.*
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*
5. Whether the claim petition is premature as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : No

Issue No. 5 : Not pressed.

Relief. : Claim petition dismissed *vide* operative portion of the Award.



**REASONS FOR FINDINGS****ISSUES NO. 1 TO 3**

8. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

9. Shri Ghanshyam (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that no breaks in service were given to him by the respondent and he used to voluntarily remain absent from his duties. He also denied that in the years 2002 and 2007, he did not work for a single day with the respondent/department. He cannot tell the number of days he served the respondent in the years 2002 and 2007. He denied that he could not complete 240 days of work as he used to mostly remain absent from duty. His services were terminated by the respondent on 29.7.2010. He denied that he was on duty on 01.8.2010 and served the respondent for 30 days in the month of August, 2010. After 29.7.2010, he was called for work by the respondent in the month of March. He does not remember the year. He served for 10-12 days in the month of March and, thereafter, his services were disengaged once again by the respondent. He feigned ignorance about the fact that in the year 2011, he served the respondent for 119 days. He used to report for duty as and when he was summoned for undertaking the seasonal works. He denied that he did not report for duty after July, 2011, despite being called by the respondent for doing the seasonal work(s). He even denied that he abandoned the job and his services were never disengaged by the respondent. He refuted that to gain the employment and other undue benefits unlawfully he has instituted a phoney petition.

10. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that as per the seniority list, eight persons junior to the petitioner are working under him. When the petitioner left the service, no notice was given to him asking him to resume the duties. Even no departmental proceedings were initiated against the petitioner.

11. Ex. PW1/B is the seniority list of daily wagers of Suket Forest Division, Sunder Nagar as it stood on 31.3.2003. It corresponds to Ex. RW1/C. The names of as many as 386 labourers have been mentioned in these lists. The name of the petitioner is at serial No.378 of the list(s).

12. Exts. RW1/B and PA are the mandays charts relating to the petitioner.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager in the month of July, 2000.

14. The version of the petitioner is that from July, 2000 to June, 2010, artificial/fictional breaks in service were provided to him by the respondent malafidely. In the month of July, 2010 i.e. on 29.7.2010, his services were finally terminated by an oral order unlawfully.

While denying the above noted facts the respondent has maintained that the services of the petitioner were engaged for seasonal forestry works only. He used to work intermittently as per his

convenience and remain absent from duties. Neither any break in service was provided to the petitioner nor his services were disengaged in the month of July, 2010 as alleged. Actually, the petitioner left the job of his own accord and free volition after the month of July, 2011.

15. The petitioner has failed to lead any cogent and convincing evidence to show that the mandays charts Exts. PA and RW1/B are incorrect. The mandays charts make it crystal clear that the petitioner was an intermittent worker. He did not work for a single day in the years 2002 and 2007. In the years 2000, 2001 and 2003 to 2006, he served for 60 days or less than 60 days in a calendar year. If the presence of the petitioner was not marked by the respondent or intentional breaks in service were provided to him (as claimed), then why he (petitioner) remained tight lipped and complacent about his rights for almost 10 years. The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. A person not working for a single day in a year or for less than 60 days in a calendar year cannot be permitted to take advantage by canvassing that artificial/fictional breaks in service were provided to him by his employer/respondent, particularly when he did not agitate the matter for almost 10 years. Thus, to my mind, intentional breaks in service were not provided to the petitioner by the respondent.

16. Now comes the question as to whether the services of the petitioner were finally terminated by the respondent on 29.7.2010 wrongly and illegally or not?

Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Govt. and the matters incidental thereto.

17. As already mentioned, the petitioner has failed to adduce any evidence to establish that the mandays charts Exts. PA and RW1/B are wrong. These mandays charts unfold that the petitioner worked with the respondent/department in the month of August, 2010 for 30 days. After that, he served the respondent from December, 2010 to March, 2011 continuously. Lastly, the petitioner worked for 31 days in the month of July, 2011. While testifying in the Court as PW1, the petitioner (PW1) did not have the guts to say that he did not work under the respondent in the year 2011. Instead, he feigned ignorance about the fact that he worked for 119 days in the year 2011. Since the petitioner worked with the respondent upto July, 2011, the question of the termination of his services by the respondent in the month of July, 2010 (as per the reference) does not arise. At the cost of reiteration, I will like to add that the petitioner had served for 30 days in the month of August, 2010.

18. Such being the situation, I have no hesitation to conclude that neither intermittent breaks in service were given to the petitioner by the respondent nor the services of the former were finally terminated by the latter in the month of July, 2010. The claim petition is not maintainable. It appears to me that the petitioner is telling nothing else except a bundle of lies just to derive the undue advantage(s). He is required to be non-suited.

19. These issues are decided against the petitioner and in favour of his adversary.

#### **ISSUE NO. 4**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of

which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest 383 Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUE NO. 5

22. Not pressed.

#### RELIEF (ISSUE NO. 6)

23. As a sequel to my findings on the issues No.1 to 3 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of November, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 15/2013

Date of Institution : 18.02.2013

Date of Decision : 28.11.2013

Smt. Pawaneshwari w/o Shri Hem Raj, r/o Village Pakla, P.O. Bakani, Tehsil & District Chamba, H.P. ..Petitioner.

*Versus*

The Deputy Director, Animal Husbandry Chamba, District Chamba, H.P.

*..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Pawaneshwari, W/O Shri Hem Raj, R/O Village Pakla, P.O. Bakani, Tehsil & District Chamba, H.P. by The Deputy Director, Animal Husbandry Chamba, District Chamba H.P. w.e.f. 1-11-2007 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a Peon by the respondent on 1st February, 2007 in Veterinary Dispensary Jadda. Thereafter, she served at Bakani. She continuously worked as such up-to 31st October, 2007 and completed more than 240 days of work. On 1<sup>st</sup> November, 2007, her services were terminated by the respondent by a verbal order without assigning any reason. Before the disengagement of her services, no notice was given to her. At the time of her disengagement, the persons junior to her, who are favorites of the respondent namely Shri Sharwan Kumar s/o Shri Raghu Ram etc. were retained in service by the respondent/department. The latters are still working as daily wagers. She requested the respondent time and again to re-employ her, but in vain. Despite the availability of the work and the funds, the respondent has refused to re-employ her. Final refusal was made by the respondent in the 1st week of June, 2011. After that a demand notice dated 20.7.2011 was served upon the respondent by her, but of no avail. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, she (petitioner) prays that the termination order dated 01.11.2007 be upset. The respondent be directed to reinstate her in service on the same post of peon with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. She has no cause of action. The petitioner has misrepresented herself. She has approached the Court by concealing the material facts. The petition is hit by the vice of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily paid labourer. However, it has been pleaded that she was appointed for carrying out the seasonal work of

cutting undesired bushes, plantation etc. on account of the special grant given by the Director, Animal Husbandry, Himachal Pradesh vide letters dated 7th May, 2007 and 30th July, 2007. The services of the petitioner were not engaged on 1st February, 2007 as claimed. She was initially employed in the month of April, 2007 and deputed in Veterinary Dispensary, Bakani. She worked for only 139 days in the year 2007. The special grant sanctioned by the Director, Animal Husbandry, Himachal Pradesh was for a limited period only. Keeping in view the requirement of Veterinary Dispensary, Bakani, the petitioner was allowed to continue working up-to 17.10.2007. Payment of the wages was made to her from 2403-Animal Husbandry (104)-Sheep and Wool Dev., {04} Sheep Breeding Farm (Soon) N.P.-II and (101) Vety. Services and Animal Health (01) Hospital and Dispensaries NP-II budget heads. Because of the utilization of the special grant/mandays the services of the petitioner could not be continued beyond 17.10.2007. Shri Sharwan Kumar whose name has been disclosed by the petitioner, is senior to her. He was employed as a seasonal worker in May, 2004. With effect from 18.12.2006, Shri Sharwan Kumar was duly appointed as a daily paid worker after holding the due process of selection. The petitioner is precluded from claiming parity with Shri Sharwan Kumar. Moreover, the services of the petitioner were engaged on account of the seasonal works. She was duly apprised regarding the terms of her employment by the field staff. She (petitioner) consented to the terms and conditions of the employment. Only thereafter she was put on the rolls of the office. Per letter dated 22.5.2013 issued by the Assistant Director, Sheep Breeding Farm, Sarol, District Chamba, the petitioner was called to work on mandays in Parloon Dhar (Churah). She did not respond to such letter till 31.5.2013. No person junior to the petitioner has been retained in service or engaged/reengaged. She did not complete 240 days of work as claimed. No provision of the Act has been flouted. The demand notice was served by the petitioner at a belated stage. She is gainfully employed as an agriculturist. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that her services were not engaged as a seasonal worker for cutting undesired bushes and plantation etc. She was not employed for a limited period. Parloon (Churah) is at a distance of more than 100 kilometers from Bakani where she was working. The offer to join the duties vide letter dated 22.5.2013 seems to have been made just to scuttle her claim.

5. Per order dated 02.8.2013, following issues were struck:-

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 01.11.2007 is illegal and unjustified as alleged? ..*OPP.*
2. Whether the petitioner has a cause of action? ..*OPP.*
3. Whether the petition is not maintainable in the present form? ..*OPR.*
4. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ..*OPR.*
5. Whether the petition is hit by the vice of delay and laches as alleged? ..*OPR.*
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes. However, the services of the petitioner were retrenched on 18.10.2007.

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : Not pressed.

Issue No. 5 : No

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Smt. Pawaneshwari (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were engaged by the respondent/department in the year 2007 for undertaking the seasonal works due to the availability of the special budget. She denied that she used to cut the bushes etc. Self stated, she was working as a peon in the office. She admitted that in all 66 persons were employed by the respondent on temporary basis and she was deputed in Veterinary Dispensary, Bakani. She denied that she worked for only 139 days from April, 2007 to October, 2007. Volunteered, she had joined the service on 01.2.2007. She cannot produce any record to show that her services were engaged by the respondent on February 1, 2007. She admitted that the respondent used to pay her the wages from the special budget/grant and not the salary head. She does not know that due to the exhaustion of the budget the respondent could not continue with her services and the services of 65 other seasonal workers after 17.10.2007. She admitted that in the year 2013, the respondent had written a letter to her and other labourers to join the duties in Parloon Dhar (Churah). She even admitted that she did not report for duty despite the receipt of the said letter. Self stated, the respondent had remarked that the work will be provided for only 75 days and thereafter, her services will be terminated. She denied that the principle of 'last come first go' was followed by the respondent. She admitted that the services of Shri Sharwan Kumar were engaged by the respondent in the year 2004 and he is senior to her. She also admitted that an interview was held in the year 2004 in which Shri Sharwan Kumar and 14 other persons were selected. She did not participate in the interview. Volunteered she was not called for the same. She is not aware of the fact that after being selected in the year 2004, Shri Sharwan Kumar was appointed in the year 2006. Volunteered, Shri Sharwan Kumar has been appointed against the handicapped quota. She denied that she was aware of the interview which took place in the year 2004 and did not participate in the same intentionally. Further, she denied that the instant industrial dispute has been raised by her at a belated stage. She makes both the ends meet by doing the work of agriculture. She denied that to gain the employment and other undue benefits, she has instituted a phoney petition.

9. Conversely, Dr. V.K. Bhardwaj, Assistant Director (Project) holding charge of the Dy. Director, Animal Husbandry, Chamba (respondent) testified as RW1. In his affidavit Ex.

RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply furnished by him.

In the cross-examination, he denied that the services of the petitioner were engaged as a peon on 01.2.2007. Self stated, she was employed as a casual labourer. He also denied that fictional breaks in service were provided to the petitioner and the persons junior to her are still serving under him (respondent). He refuted that the services of the petitioner were disengaged in an unlawful manner.

10. Exts. RW1/B and C are the copies of the letters dated 7th May, 2007 and 30th July, 2007 written by the Director, Animal Husbandry, Himachal Pradesh to the respondent. Vide these letters special grant/sanction was accorded by the Director in favour of the respondent for employing the daily wagers for carrying out the seasonal works. It was mentioned in these letters that the services of the labourers/seasonal workers be disengaged immediately on the completion of the working days/period for which the special budget has been allocated.

11. Ex. RW1/D is the mandays chart relating to the petitioner.

12. Ex. RW1/E is the seniority list of casual labourers temporarily engaged in Animal Husbandry Department, Chamba District, during different years. In all, the names of 66 labourers find mention in this list. The name of the petitioner figures at serial No.55.

13. Ex. RW1/F is the seniority list/mandays chart of the casual labourers temporarily engaged by the respondent. In this list also, the names of 66 persons have been recorded and the name of the petitioner is there at serial No.55.

14. Ex. RW1/G is the copy of the merit list prepared by the respondent on the basis of interviews held from 02.6.2004 to 05.6.2004 for employing the daily wagers. The name of Shri Sharwan Kumar finds mention at serial No.15.

15. Ex. RW1/H is the copy of the appointment letter/memo dated 08.12.2006 issued by the respondent in the name of Shri Sharwan Kumar.

16. Ex. RW1/J is the copy of the joining report dated 18.12.2006 submitted by Shri Sharwan Kumar.

17. Ex. RW1/K is the copy of the letter dated 22.5.2013 written by the Assistant Director, Sheep Breeding Farm, Sarol, District Chamba. As per this letter, the petitioner was informed that the work of repairing the sheds and cleanliness etc. is available in Parloon Dhar (Churah) for a period of 75 days. In case, she (petitioner) is interested to work, she should submit her willingness in the office up-to 31st May, 2013.

18. Ex. RW1/L is the copy of the muster roll issued by the respondent in favour of Shri Sharwan Kumar (daily wager) for the month of December, 2006.

19. Ex. PA is the copy of a certificate issued by Shri Jitender, Veterinary Pharmacist, In-charge Veterinary Dispensary, Bakani, District Chamba. It depicts that the petitioner served in Bakani Veterinary Dispensary from February, 2007 to October, 2007 as a daily wager. Her work and conduct was good.

20. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily paid labourer. The petitioner has not placed/exhibited on the file any

appointment letter/order etc evidencing that her services were engaged as a peon by the respondent on 1<sup>st</sup> February, 2007. She (petitioner) has failed to lead any cogent and convincing evidence to show that the mandays chart Ex. RW1/D produced by the respondent is incorrect. The mandays chart makes it crystal clear that the petitioner served the respondent/department as a daily wager from April, 2007 to 17th October, 2007. She worked with the respondent/department for only 139 days. In view of the mandays chart Ex. RW1/D, I fail to understand as to how and on what basis certificate Ex. PA was issued by Shri Jitender (Veterinary Pharmacist) to the effect that the petitioner served from February, 2007 to October, 2007. The recital made in Ex. PA regarding the month of engagement of the petitioner is totally wrong being contrary to the mandays chart Ex. RW1/D. Moreover, as already mentioned, the petitioner has not placed/exhibited on the file any document to show that she was employed on 1st February, 2007 (as claimed).

21. Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding providing the artificial/fictional breaks in service to the petitioner by the respondent as alleged. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

22. The seniority lists Exts. RW1/E and F coupled with the admissions made by the petitioner (PW1) make it abundantly clear that in all 66 casual/daily labourers were temporarily engaged by the respondent from the year 2003 to 2007. Pursuant to the special grant sanctioned by the Director, Animal Husbandry, Himachal Pradesh per letters dated 7th May, 2007 and 30th July, 2007, the copies of which are Exts. RW1/B and C, the petitioner and others were employed. The name of Smt. Pawaneshwari Devi (petitioner) figures at serial No.55 of the seniority lists. The name of Shri Sharwan Kumar is there at serial No.9 of the lists.

23. As mentioned earlier, the mandays chart Ex. RW1/D unfolds that the petitioner served the respondent/department from April, 2007 to 17th October, 2007 for only 139 days. Since the petitioner did not work for 240 days in a period of 12 calendar months preceding the date/month of her termination as envisaged under Section 25-B of the Act, the provisions of Section 25-F of the Act are not attracted in this case.

24. The petitioner has failed to divulge the name of any person who was employed after the termination of her services by the respondent. Thus, it cannot be said that the respondent has contravened the provisions of Section 25-H of the Act.

25. At the cost of reiteration, I will like to add that Exts. RW1/E and F are the seniority lists. Ex. RW1/F also contains the mandays of the temporarily engaged labourers. Ex. RW1/F goes to show that at the time of the termination of the services of the petitioner on 18th October, 2007, the persons junior to her namely Sh. Satish Kumar etc. were retained in service by the respondent. S/Shri Satish Kumar (serial No.58), Bhupinder Singh (serial No.59) and Sher Singh (serial No. 60) were employed by the respondent in the month of July, 2007 i.e. after the appointment of the petitioner in the month of April, 2007. They served the respondent/department up-to 31st October, 2007. Not only this, Shri Satya Parkash (serial No. 61) and Shri Karam Chand (serial No.62) were employed by the respondent in the month of August, 2007. They too served the respondent/department up-to 31st October, 2007. This indicates that at the time of the termination of the services of the petitioner the persons junior to her were retained in service by the respondent. The latter failed to adhere to the principle of 'last come first go'. His action is in derogation of the provisions of Section 25-G of the Act. For the said reason, the termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit



under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his/her termination.

26. This issue is decided in favour of the petitioner and against the respondent.

## ISSUE NO. 2

27. Keeping in mind my findings on issue No.1 above, it is held that the petitioner has a cause of action.

28. This issue is also decided in her favour.

## ISSUES NO. 3 AND 4

29. Not pressed.

## ISSUE NO. 5

30. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

31. Now comes the all important question as to what relief should be granted to the petitioner?

The record shows that the petitioner served the respondent/department as a daily waged casual labourer for 139 days only from April, 2007 to 17th October, 2007. 65 similarly situated workmen worked with the respondent/department latest up-to 31st October, 2007. The demand notice was raised by the petitioner on 20.7.2011 (as per para 6 of the claim petition/demand) i.e. after almost 3 years and 9 months from the date of her termination.

32. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon’ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

33. In Mohan Lal's case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

34. To my thinking, the petitioner (Smt. Pawaneshwari Devi) is not entitled to the reinstatement of her services keeping in view all the relevant factors including the mode and manner of her appointment, nature of the employment and the length of service etc. particularly when she spurned the offer made by the respondent/department per letter dated 22.5.2013 (Ex. RW1/K) to report for duty in Parloon Dhar (Churah). While testifying in the Court as PW1, the petitioner has given her age as 27 years. During the cross-examination, she admitted that she earns her livelihood by doing the work of agriculture. Taking into consideration the trite laid down in Mohan Lal's case (cited above), the factors narrated above and the ground on which the termination of the services of the claimant/petitioner has been held to be bad in the eyes of law by this Court i.e. the contravention of the provisions of Section 25-G of the Act, I feel that it will be just and expedient if the respondent/employer is directed to pay a sum of Rs.20,000/- (twenty thousand only) to the petitioner as compensation in lieu of the reinstatement.

35. This issue too is decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 6)**

36. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The disengagement of the services of the petitioner by the respondent on 18.10.2007 is set aside and quashed. The respondent is directed to pay the compensation of Rs.20,000/- (twenty thousand only) to the petitioner in lieu of the reinstatement of her services as well as the other consequential benefits, if any. Such amount will be paid by the respondent to the petitioner or deposited in this Court within a period of 60 days from today failing which he (respondent) will be liable to pay the interest @ 9% per annum on the said amount from the date of the institution of this reference i.e. 18.2.2013 till the date of payment/deposit. Parties to bear their own costs.

37. The reference is answered in the aforesaid terms.

38. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

39. File after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of November, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

